

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 CHARLOTTE DIVISION

4 **CONFIDENTIAL PORTIONS INCLUDED**

5 IN RE:

6 GARLOCK SEALING TECHNOLOGIES, No. 10-BK-31607
7 LLC, et al,
8 Debtors.

9 VOLUME XI-B
10 AFTERNOON SESSION
11 MONDAY, AUGUST 5, 2013

12 TRANSCRIPT OF ESTIMATION TRIAL
13 BEFORE THE HONORABLE GEORGE R. HODGES,
14 UNITED STATES BANKRUPTCY JUDGE

15 **CONFIDENTIAL PORTIONS INCLUDED**

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Richard L. Magee.....		3034.....		3097

E X H I B I T S

Debtors' Exhibits No.: ADMITTED

ACC's Exhibits No: ADMITTED

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P R O C E E D I N G S

(On the record at 2:21 p.m.)

MR. CASSADA: Your Honor, I just have a few questions.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. CASSADA:

Q. Dr. Bates, you were asked during your cross-examination about how you determine claimants who had established contact against Garlock. You were talking about the PIQ form and checking the box.

A. Yes.

Q. Could you describe, completely, the recent -- I mean the sources you looked to to establish -- to determine whether a claimant had actually established contact?

A. Right. I don't want to leave the impression that we just simply looked at the PIQ form as it was and if they had the box checked we took it as contact and if they didn't, we didn't. In fact, we looked through, exhaustively, all of the material that was provided. Because as Your Honor recalls, some of the -- we allowed for the process that the claimants could submit documents in addition to, or as an alternative to filling out the form.

Redirect - Bates

1 So a lot of the work that was actually done into
2 here was in going through those background documents to
3 make sure that they were accurately filled out.
4 Dr. Gallardo-Garcia described the exhaustive process that
5 we went through on that. So it included not only those
6 who checked the box for themselves but also those for
7 whom we could find anything equivalent to an assertion of
8 contact to the Garlock product, and in that case we
9 checked the box for the plaintiff.

10 Q. Okay. There was also testimony about the number
11 -- how you reached the number of trusts against whom
12 plaintiffs would have -- would have claimed.

13 A. Correct.

14 Q. Would you -- to what extent did you rely on 2019
15 statements to establish bankruptcy claims?

16 A. Well, we actually didn't. I misspoke when I said
17 that. The 2019 statements we had not gotten in
18 sufficient quantity and in the right method to be able to
19 use them in that basis. So the analysis that we did was
20 based solely on the 18 exposures we got through the --
21 through the PIQ process and the additional four exposures
22 that we get through the balloting process. So the 2019s
23 weren't used on that.

24 Q. Okay. And finally, there were questions that were
25 asked by Mr. Guy regarding the impact or difference in

Redirect - Bates

1 Garlock's total defense costs from the late 1990s to the
2 late 2000s, just before the bankruptcy.

3 A. Right. Right.

4 Q. And I believe Mr. Guy used the chart that we're
5 about to display here.

6 A. Right. Actually, we need to be able to see it.
7 Shrink it down a little bit. I didn't -- I thought
8 something was a little off on this, but I couldn't
9 actually -- until I sat down at lunch and I realized that
10 these are the total defense costs on the second column
11 there for the -- whereas, the claims that are being done
12 here in this calculation are only the Mesothelioma
13 claims. And so down here is a combination of adding the
14 final claims to the resolved claims to basically say
15 we're going to count the claims twice, once when they're
16 filed and once that's been resolved, in terms of figuring
17 out this calculation of defense costs per resolved claim.
18 It's missing all the claims that are not Mesothelioma.

19 In the second column, all of the thousands -- tens
20 of thousands of Mesothelioma -- non-Mesothelioma claims
21 that are actually being dealt with within the 1990s
22 represented 90 percent of the expenditure -- 90 percent
23 of the attention of Garlock were included in those
24 defense costs over there, and yet in this calculation
25 they're left off. So if you actually include all of the

Redirect - Bates

1 claims that were filed and resolved but, in particular
2 just because of the nature and what the claims are. And
3 just to give a sample calculation. If you just look at
4 the number of claims that are settled, because these are
5 the claims in which you're paying money for. Look at
6 those relative to the defense costs that are done, so you
7 get the average per settled case. You get, essentially
8 in the 1990s, \$500 per claim, perhaps, in terms of
9 resolved settled claims. Whereas, by the time you get to
10 the period of 2008-2009 where, by that time, almost all
11 of the activity of settled claims is actually dealing
12 with Mesothelioma claims, now you're up around the
13 numbers of the type that Mr. Guy has there of eight,
14 \$9,000 per claim.

15 So, in fact, you see exactly the pattern, the
16 average cost per claim, as Mr. Guy described of what you
17 should expect to see if the defense costs had gone up.
18 Now I don't take that as dispositive analysis because, of
19 course, there's a lot of confounding factors in that
20 having to do with the number of claims that are there and
21 we don't get the Garlock defense cost data in in a
22 disaggregated way that actually facilitates what I think
23 would be an appropriate analysis of that.

24 But this chart, as it is, is very misleading and
25 for the point that Mr. Guy was trying to make because,

Redirect - Bates

1 of course, most of the claims and most of the attention
2 you're dealing with in the 1990s was the tens of
3 thousands of nonmalignant claims which they were working
4 on resolving. So I found it to be distortionary.

5 Q. And you had also drawn a distinction between the
6 incurred defense costs and the avoidable defense costs.

7 A. Right. That was the fundamental point I made as
8 part of my direct testimony which is the fundamental
9 point, which is not the costs that are incurred but it's
10 the costs that are avoided. You would expect to see --
11 it's not surprising that the costs would go up.
12 Unfortunately, we don't have the data that would actually
13 allow us to break that out because we don't have it
14 available on a detailed enough level.

15 Q. I'm sorry. You're talking about which costs now?

16 A. You can't do the analysis on the incurred cost to
17 actually know how much of it -- what the cost per plan
18 is, because there's significant differences in how the
19 claims are resolved by disease and by disease category.
20 What we know definitively is this is misrepresenting what
21 actually occurred.

22 Q. So, focusing back on the avoiding cost. Could you
23 describe briefly the sources of data that you relied on
24 to determine the extent of the increase in the avoidable
25 costs?

Redirect - Bates

1 A. Well, we -- the exhibit that Mr. Guy pointed to
2 shows the sample of costs that we have for cases that
3 were done at very -- resolved at various stages of the
4 litigation. So we get the idea of the kind of costs that
5 could be avoided by going -- depending how deep into the
6 litigation one went. And then we used that in
7 combination with the model, the economic model, relating
8 to settlements and the liability to estimate what the
9 avoidable costs would be based on the settlement amounts
10 and the liability likelihood too.

11 Q. Thank you. That's all I have, Your Honor.

12 THE COURT: Okay.

13 MR. GUY: Short redirect, Your Honor.

14 THE COURT: All right.

RECROSS EXAMINATION

15
16 BY MR. GUY:

17 Q. Dr. Bates, you're saying that you don't have any
18 breakdown of incurred costs? Is that what I heard?

19 A. I don't have the breakdown by disease.

20 Q. So when a Garlock witness says, well, our costs
21 for Mesothelioma cases doubled, our incurred costs,
22 they're not basing it upon any data that you have?

23 A. Not data that I have. Garrison has additional
24 data; Garlock has additional data.

25 Q. You agree with me, sir, that the number of

Recross - Bates

1 Mesothelioma claims doubled from the late '90s to 2009?

2 A. Approximately.

3 Q. And you would agree with me in the 2000s most of
4 the cases that the debtors were dealing with in terms of
5 the complaints that we've filed against them were
6 Mesothelioma cases, in light of the fact that the
7 nonmalignant cases had dropped off?

8 A. They were still dealing with the resolution of
9 those cases that were on the docket. So there was -- you
10 know, the amount of their attention that went through the
11 nonmalignant claims dropped. But the amount of that in
12 defense expenses that was focused on getting those cases
13 removed from the docket, I don't know.

14 Q. This is the only actual data that we have in terms
15 of real world defense costs; right? There's no
16 disaggregation?

17 A. As far as I know. I don't have the disaggregated
18 data.

19 Q. No further questions.

20 A. Thank you.

21 THE COURT: You can step down.

22 MR. INSELBUCH: Your Honor, could we defer until
23 we get the transcript the organization of the exhibits?
24 Because I can't remember now which ones I actually
25 offered.

Recross - Bates

1 THE COURT: Oh, you mean the admitting?

2 MR. INSELBUCH: Yes.

3 THE COURT: Sure.

4 Step down. Thank you, Dr. Bates.

5 MR. GUY: Your Honor, we'll provide our
6 demonstratives.

7 THE COURT: Thank you.

8 (Witness excused at 2:30 p.m.)

9 THE COURT: There was talk the other day about the
10 need to get one of Mr. Swett's witnesses in. Do you-all
11 have an order you want to go in?

12 MR. CASSADA: Yes. We got notice from Mr. Swett
13 that Mr. Rice would not be in testifying today.

14 THE COURT: All right. Okay. Good.

15 MR. CASSADA: Your Honor, I believe we're ready to
16 recall Mr. Magee.

17 THE COURT: We'll recall Mr. Ma gee then.

18 THE CLERK: Place your left hand on the Bible.
19 Raise your right hand.

20 (Witness duly sworn at 2:31 p.m.)

21 MR. CASSADA: Your Honor, we've organized our
22 examination here today again to minimize the time during
23 which the Court would actually have to be closed.

24 THE COURT: All right.

25 MR. CASSADA: So we'll cover some materials I

Direct - Magee

1 thought that we might otherwise have followed a different
2 order on.

3 **DIRECT EXAMINATION CONTINUES**

4 BY MR. CASSADA:

5 Q. So Mr. Magee, let's begin by --

6 A. Excuse me a second, Mr. Cassada. I accidentally
7 turned the screen off.

8 Q. Let's begin by discussing the fundamental
9 requirements that Garrison established before the
10 settlement of a Garlock claim. Would you describe those
11 to the Court, please?

12 A. Well, what I've put up on the screen are the
13 payment approval criteria in the event of a settlement.
14 I think we've talked a lot about requirements for a
15 settlement and what caused a claim to be settled or not
16 settled. But if Garlock had determined and agreed to
17 settle a claim, these were the requirements on this
18 screen.

19 Product identification. The claimant had to
20 identify Garlock product. That was the first
21 requirement. There had to be a medical diagnosis that
22 Garrison determined to be a legitimate medical diagnosis
23 of whatever the alleged disease and whatever the --
24 whatever the disease that was being settled. In other
25 words, if it was being presented as a Mesothelioma claim

Direct - Magee

1 for payment, it had to have a legitimate -- a legitimate
2 Mesothelioma diagnosis that Garrison would have to agree
3 was legitimate.

4 And then Social Security information. And the
5 reason for that was, there are lots of names that are the
6 same or similar. So in order to pay a claim, Garrison,
7 in its procedures, would have to make sure that it had
8 not previously paid the claim, and so it required Social
9 Security identification information. There were
10 occasions where a claimant would present more than one
11 claim. So, that was a necessary step.

12 Then if the approval level is required, certain
13 approvals, the Garrison legal staff had approvals up to
14 one level. Then it required Mr. Grant's approval. And
15 above his level, then it would require my approval. And
16 for the most -- the highest paid claims it would require
17 the CEO's approval. So to the extent those approvals
18 were required, there to had to be an expense approval
19 form that was signed by the appropriate person for that
20 settlement to be paid.

21 And then last but not least, there had to be a
22 release form acceptable to Garrison that was -- that was
23 signed by the claimant or the claimant's counsel
24 releasing Garlock and all its affiliated -- all its
25 affiliate parties from liability.

Direct - Magee

1 Q. Can you talk a little bit about the requirements
2 of releases that Garlock obtained? I now focus you on a
3 new slide. It's actually slide three of today's
4 presentation which has excerpts of language from
5 releases. Would you describe whether these are -- this
6 language is typical and why it was required?

7 A. Yes. This is the typical language. It's not the
8 complete language because there would also be language
9 about the parties released. But the key to this language
10 is all the releases had to have an affirmation that
11 Garlock was not by releasing -- by entering into
12 settlement and paying the claim was not acknowledging
13 liability. And in fact, it had to acknowledge that
14 liability was expressly denied in connection with the
15 settlement.

16 Q. So each claimant who settled a claim with Garlock
17 acknowledged that Garlock was not admitting any
18 liability.

19 A. That was a requirement. Garlock was settling the
20 claim or was not acknowledging or admitting liability.

21 Q. Okay. I want to talk about financial statements.
22 Because we've heard testimony already today about the
23 meaning of certain statements in the financial statements
24 of EnPro and its subsidiaries, and I know you had a role
25 in that. And specifically, we've heard discussion about

Direct - Magee

1 Garlock's -- the asbestos disclosures for Garlock in
2 public filings.

3 Now you said earlier that EnPro is a public
4 company. What does that mean?

5 A. Well, when I say that EnPro is a public company,
6 it means that it has securities that are publicly traded
7 on a -- in EnPro's case, on the New York Stock Exchange,
8 a U.S. national exchange. And so the public are the
9 owners of the company by owning shares that are publicly
10 traded on the exchange.

11 Q. As a public company, did EnPro have any
12 responsibility to report to the investing public
13 regarding the litigation matters?

14 A. Well, it had a -- it had, yes, an obligation to
15 report on litigation matters and all other matters.

16 Q. We saw earlier today, I think, or at least we
17 heard from excerpts from 10-Ks. Would you describe what
18 a 10-K is?

19 A. Well, a 10-K is one of several forms that were
20 forms adopted by the Securities and Exchange Commission
21 for public companies to use in a periodic -- in meeting
22 their periodic reporting requirements. The SEC required
23 public companies to report quarterly on forms 10-Q and
24 annually on forms 10-K about a number of matters, matters
25 that were expressly laid out in the form and cross-

Direct - Magee

1 referenced to regulation SK, which is a regulation of the
2 Securities and Exchange Commission, about the information
3 that was required to be in the document. And those
4 documents -- those quarterly and annual documents also
5 had the financial statements of the company. So there
6 was a requirement that the quarterly financials, which
7 would not have been audited, were in the quarterly
8 reports on 10-Q and that the annual report on 10-K would
9 have had the audited -- the annual audited financial
10 statements.

11 In addition, there was requirements about
12 reporting on the business. There was a requirement to
13 have a management discussion and analysis of the
14 financial matters. And there were lots of other
15 sections, including the section you referenced earlier,
16 the section on litigation.

17 Q. Okay. So it was in the 10-Qs and 10-Ks where
18 EnPro fulfilled its responsibility to report on matters
19 relating to its business, including litigation matters?

20 A. That's correct.

21 Q. I believe you had --

22 A. And also, there were also interim reports -- if
23 there was a material matter that came up in between a
24 quarterly report or an annual report, then there's a form
25 called form 8-K where EnPro would be required to file an

Direct - Magee

1 interim report on that form.

2 Q. You had testified earlier about your -- your time
3 as a lawyer before you went in house for the first time.
4 Did you, in fact, practice in the area of securities law?

5 A. That was a part of my practice. Yes.

6 Q. Okay. And did you have a role in connection with
7 the preparation of EnPro's 10-Qs and 10-Ks and 8-Ks?

8 A. Right. That was part of my responsibility as
9 General Counsel. And in fact, I was a signatory on those
10 documents on a quarterly basis.

11 Q. Okay. I believe we saw earlier today some
12 selected language from 10-Ks. But I take it there were
13 -- there was discussion regarding Garlock's asbestos
14 litigation and EnPro's 10-Ks and -Qs and other documents?

15 A. There were. In fact, I can remember five
16 different places in each 10-K where there was discussion
17 about asbestos. There was a discussion in the document
18 -- early in the 10-Ks, there's a discussion about risk
19 factors that would detail lots of risk factors associated
20 with an investment in the company's securities. So
21 that's the place where investors can go read about risk
22 factors associated the company. Asbestos was listed as
23 one of those risk factors.

24 There's another section where "Critical Accounting
25 Policies" where all the different accounting policies

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1 that are particular to EnPro that the accountants and the
2 company agree need to be spelled out were listed. And
3 there, in the critical accounting policies, there's a
4 section on the accounting related to asbestos. As I said
5 earlier, the financial statements were included in the
6 10-K. There is a footnote in the financial statements
7 called "Contingencies," and asbestos was a major
8 component of the contingencies footnotes -- footnote in
9 the -- in the financial statements.

10 Also, I mentioned earlier management's discussion
11 and analysis. There was -- that's where management
12 discusses and analyzes the financials. There's a section
13 in that MD&A -- that's short for Management's Discussion
14 and Analysis; that's the MD&A -- that dealt with
15 asbestos. It had much of the same information as in the
16 footnote to the financial statement, but often other
17 parts that wouldn't be required to be in the financial
18 statements.

19 And finally, one other place where asbestos was
20 discussed in the 10-Ks was in a section called
21 "Litigation." There was not much in that section. It
22 simply cross-referenced to the discussion in the
23 Management's Discussion and Analysis. So in those, at
24 least, five different places there were discussions about
25 asbestos in the 10-Ks and 10-Qs.

Direct - Magee

1 Q. So you would describe those as a very thorough
2 discussion of the litigation and many different aspects
3 of it?

4 A. I would describe that as thorough and integrated.
5 It's important to understand what it says as a whole.

6 Q. Now, I believe you had testified earlier that the
7 -- you became, actually, General Counsel for EnPro in
8 about June of 2002?

9 A. Well, that's the date when EnPro became a public
10 company. The spin-off happened in June of 2002. The
11 company itself had been created earlier, but it had no
12 assets until the spin-off happened. So, officially, I
13 guess that's when that happened. Yes.

14 Q. Okay. Can you describe generally the approach
15 that EnPro took to reporting on asbestos litigation after
16 the spin?

17 A. Well it addressed asbestos and asbestos litigation
18 in each of those sections that I referred to earlier.
19 So, I'm not sure if your question is --

20 Q. Did EnPro, at that time, quantify specific
21 liability for Garlock's asbestos litigation?

22 A. It did not in total. Coltech at one point,
23 Goodrich during the time period when it owned Coltech;
24 and then after the spin-off, EnPro had adopted an
25 accounting policy at that point where, because of people

Direct - Magee

1 who were managing the asbestos, including me starting in
2 2002, did not believe that for any particular asbestos
3 claim that an amount that would be paid could be probable
4 or estimable. That was -- and I think we saw earlier in
5 the case Financial Accounting Standard 5 which says in
6 order to accrue a liability on a financial statement, the
7 amount that you expect to pay has to be both probable and
8 estimable.

9 It was the position of people before me and my
10 position in -- my strong position when I inherited this
11 in 2002 -- that with respect to any specific litigation
12 matter for asbestos against Garlock that it was not
13 probable that Garlock was going to have a liability. So
14 that therefore, FAS-5 would not require an amount to be
15 accrued for that liability.

16 Instead, we did accrue small amounts, relatively
17 smaller amounts, for liability when a settlement had been
18 reached and an agreement had been made to pay a
19 settlement, or when it was so close to being a settlement
20 that the Garrison people had -- had reached an
21 understanding of an amount that would be paid on a claim.
22 At that point, it became a payment estimate; it wasn't a
23 liability estimate. So we determined at that point that
24 that did have to be included as a financial statement
25 liability because an amount had been determined that

Direct - Magee

1 would be paid on a claim.

2 So our position was it became a liability when you
3 could determine the amount likely to be paid on a claim.
4 And that was our position all the way until the 2004
5 year.

6 Q. Okay. Did something change in 2004?

7 A. It did.

8 Q. Describe for the Court what changed.

9 A. In connection with its operations, EnPro, and
10 particularly its financial function, determined to change
11 its outside auditors. And we -- we had new auditors come
12 in -- and Price Waterhouse Cooper came in replacing the
13 former auditors Ernst & Young. And in connection with
14 their work, and getting up to speed on the company, by
15 the summer of 2004 the new auditors informed us that they
16 believed that we needed to reassess how we were accruing
17 the liability for asbestos payments.

18 Q. Did you have a discussion with the auditor
19 regarding management's belief about whether there was a
20 liability that could be quantified?

21 A. We did. We had the discussion where I expressed
22 the viewpoint I just expressed earlier about my reading
23 of Financial Accounting Standard 5 and why it would be
24 inappropriate to establish a liability at that point in
25 time. Our auditors discussed that with us, talked it

Direct - Magee

1 through, and told us that that was not -- that the
2 prevailing opinion for people who were accruing for
3 asbestos liabilities had been -- had moved and changed
4 and that our view of that was not the prevailing opinion.
5 That their view was that FAS-5 would require an estimate
6 of a liability -- and, again, this is a financial
7 statement liability. It would be a line item on the
8 financial statements and in the "liabilities" section.

9 That is a financial statement liability would be
10 required if it was reasonably --if it was probable that
11 Garlock was going to pay a claim. Regardless, of whether
12 it had any -- my argument was about legal liability.
13 That it didn't have any legal -- it was not probable it
14 had legal liability. So, therefore, it shouldn't have to
15 record a liability on its financial statements.

16 The accountants said no, that's not what the
17 accounting definition of "liability" is. If it's -- if
18 it's probable that there's going to be an amount paid to
19 resolve a claim, then the amount that's going to be --
20 that's likely to be paid as a result of the claim has to
21 be estimated. And if it can be estimated directly,
22 that's the amount that needs to be on the financial
23 statements. If it can't be estimated exactly, it has to
24 be estimated within a range. And if there's no point in
25 that range that's any better than any other point in the

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1 range, then you have to record that estimate of what
2 you're going to make payments on the claims as a
3 liability on your financial statements at the low end of
4 that equally likely range.

5 And so after a period of discussion, we agreed
6 with our auditors and changed that accounting policy and
7 began accruing at the low end of a range. They also said
8 that the range and that amount would have to be
9 expertized and that we would have to have -- we would
10 have to retain someone who was an expert in estimation to
11 come up with that range and somebody that we could then
12 refer to in our statements as an expert who had given us
13 the numbers and then, accordingly, record the liability
14 based on the expert's estimate.

15 MR. SWETT: Your Honor, I have to register an
16 objection to the hearsay discussion with the auditors if
17 it's offered for its truth. If it's offered to explicate
18 Mr. Magee's understanding of the workings of FAS-5, then
19 that's fine and that's not hearsay. But if he's urging
20 you to take as true the account given in that long answer
21 of what the auditors said to him in a conversation that
22 has not been subjected to cross-examination to the
23 auditor, then it would be inappropriate.

24 THE COURT: All right. We'll accept it for the
25 non-hearsay aspect.

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1 BY MR. CASSADA:

2 Q. So what did EnPro do, then, once it determined
3 that it was going to have to do the quantification that
4 you just described and do that on an expertized basis?

5 A. Well, obviously, it was going to take some time to
6 get an expert up to speed in order for an expert to
7 provide an opinion. So we asked the auditors if that
8 could wait, and the accrual could wait until the end of
9 the year, and we could have an expert retained and in
10 place to do that by the end of the year; that was when
11 the next audited financial statements would be provided.

12 But the auditors told us that they thought we
13 should go ahead and do it the best we can without the
14 expert beginning in those quarters. So we did that
15 ourselves for two quarters before the end of the year.
16 And then beginning with the audited financial statements
17 for the 2004 year there was an expert in place, Bates
18 White, to provide that estimate.

19 Q. So when you said you did that for yourselves,
20 you're talking about for the specific quarterly reports?

21 A. Well, right. Mr. Grant and I together did our
22 own estimate and came up with a broad range of what the
23 potential liability could be. We expressed our view.
24 And, again, that potential liability being the potential
25 payments that we thought were likely to be made to

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1 resolve the claims over a period of time. We came up
2 with a range, and we thought that every point in that
3 range were equally likely. And then the accounting --
4 the accounting rule was if was there, as I said earlier,
5 if there was no point in that range that was more likely
6 than any other point that you accrued a liability on your
7 financial statements at the low end of that range. So
8 that's what we did. We accrued the low end of the range
9 that Mr. Grant and I had come up with.

10 Q. Okay. And then for the year end -- I guess this
11 is year end 2004. Was it by the time the financial
12 statement was prepared for that year end that you had
13 engaged through counsel, Bates White, to assist
14 management in quantifying the expend expenditures?

15 A. That's correct. They were prepared to do it by
16 the time of year end -- the year end financial
17 statements. They, obviously, were engaged earlier than
18 that to get up to speed and do the work, but that was
19 when think first provided an expert -- excuse me,
20 provided their expert opinion.

21 Q. Was Bates White engaged to do anything other than
22 the estimation work you've described?

23 A. They were. They were engaged both to do that work
24 and to assist us, Garlock, and us in the management of
25 the litigation.

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1 Q. We saw some selected excerpts from the Bates --
2 the Dr. Bates' opinions. Can you describe what it was
3 that Bates White was -- the subject of Bates White's --
4 Dr. Bates' estimation were? What was he estimating in
5 terms of the claims and time period and any other
6 factors?

7 A. Well I'm sure he's testified to that, but I'll do
8 my best to describe that generally. There were several
9 things. The first thing he had to determine was what --
10 for what period he thought an amount could be reasonably
11 estimated for future expenditures for asbestos claims.
12 Again, we only asked him to do that for the indemnity
13 payments. Our accounting policy on all litigation
14 matters was that we incurred expenses, out-of-pocket
15 expenses, as -- we accrued them as they were incurred,
16 and so that wasn't part of his estimate. But we asked
17 him -- first, he needed to determine for what period he
18 could reasonably estimate what those future expenditures
19 would be. And then once he determined that, he had to
20 apply whatever factors he did in his model to determine
21 what the estimate was for the claims for that period.
22 And I think, as he testified, there were different
23 periods where he thought it was reasonably estimable for
24 different kinds of claims. And then he would produce
25 various scenarios in a range of what that -- of what that

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1 estimate would be.

2 Q. Now --

3 A. And excuse me. I'm sorry. Because it would be --
4 he would express both a reasonably likely range and then
5 a broader range that was broader than the reasonably
6 likely range than he thought were possibilities.

7 Q. Now we've heard about the large numbers of
8 nonmalignant claims that Garlock was receiving before you
9 arrived at EnPro. At the time Dr. Bates was engaged, was
10 Garlock still receiving nonmalignant claims?

11 A. Yes. I was going to say before and after I
12 arrived. And at that time, in 2004 Garlock, was still
13 receiving nonmalignant claims. Not as many as it had
14 been, but it was still receiving nonmalignant claims.
15 And more than half of its payments for asbestos claims
16 still by that year, 2004, were for nonmalignant claims.

17 Q. So it was still receiving large numbers of
18 nonmalignant claims?

19 A. It was. Yes.

20 Q. Okay.

21 A. Declining from what it had been in the 1990s-2000
22 period, but still large numbers. Yes.

23 Q. Okay. Did you learn anything from Dr. Bates about
24 his opinion about what the future would hold for a
25 nonmalignant claim?

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1 A. We did.

2 Q. What did you learn?

3 A. Well, he -- in his scenario models he had -- he
4 had amounts estimated for what he alluded to as recruited
5 nonmalignant claims only for two to four years. Because
6 it was his view that for periods after two to four years
7 -- two years in some scenarios; four years in some
8 scenarios. For periods after two years or four years, it
9 was equally likely that nonmalignant claims would be de
10 minimis. And his view was that the incentives for the
11 recruitment of nonmalignant claims and the number of
12 available recruited nonmalignant claims were going down
13 and that that would no longer be a factor in a fairly
14 short time period.

15 Q. And so you said that under his estimation he was
16 applying a two-year period for those claims because he
17 thought that there were reasonable scenarios where those
18 claims would be de minimis?

19 A. That's right. That's what his report said. I
20 believe -- I can't recall sitting here. I think it was
21 two to four years; maybe some scenarios said four and
22 some two. I'd have to look at the specifics of the
23 report.

24 Q. Did that turn out to be true?

25 A. I think -- it definitely turned out to be true. I

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1 think it took a little bit longer than what he first
2 estimated before they were de minimis. Yes.

3 Q. But for cancer claims you were estimating a ten-
4 year period?

5 A. Dr. Bates was estimating a ten-year period.

6 Q. Management was estimating with Dr. Bates'
7 assistance a ten-year period?

8 A. That's correct. We adopted his estimate.

9 Q. Now when estimates were rendered, you had talked
10 about a range of equally likely results. Was that range
11 discounted to net present value?

12 A. It was not. It was just a nominal total amount.
13 Just take the whole period and add them up.

14 Q. Okay. Did it include claims other than
15 Mesothelioma claims?

16 A. Yes, it did.

17 Q. And that was true throughout the period in which
18 management was making those estimates up until the date
19 of the petition?

20 A. It was. But toward the end, it was -- there were
21 very low amounts in there for nonmalignant claims. There
22 would have been amounts for Mesothelioma claims and other
23 cancer claims but not significant dollars for
24 nonmalignant claims by that time.

25 Q. Now there was some focus earlier today on language

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1 in the estimated -- in the actual 10-Ks where I think
2 management would adopt Dr. Bates' range. And there were
3 two lines in there. One of them talked about the
4 possibility that claims would be de minimis at the end of
5 the time period. Do you recall that language?

6 A. I do. That was part of the entire language in the
7 document. Yes.

8 Q. Okay. And then there was another line that the
9 Committee and Futures rep seemed to be particularly
10 interested in that talked about plausible scenarios where
11 the expenditures could exceed a billion dollars.

12 A. Yes.

13 Q. Can you describe what management was saying in its
14 disclosure? And, specifically, what were you talking
15 about in that particular line?

16 A. Well, sure. Those were my words, so I can
17 describe those. I wrote that line. My view -- I think
18 if you read the disclosure in their entirety, you will
19 see that we're saying that the resolution of asbestos
20 claims is highly uncertain; very difficult to estimate.
21 That amounts in periods further out are even more
22 speculative than amounts in periods closer in. And we're
23 painting the picture that it was a very difficult task to
24 estimate a number for future asbestos expenditures.

25 In fact, one of the reasons I liked the way we had

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1 disclosed information about the asbestos exposure prior
2 to 2004, when we had to have an estimate, was that it
3 talked broadly about the risks and what the risks were.
4 It didn't try to quantify it them, but it painted a
5 picture for investors that this was something that was
6 highly uncertain and that they needed to be aware of.

7 My fear was that putting a number, a specific
8 number, on the asbestos expenditure, the asbestos
9 liability for the financial statements, would be relied
10 on too heavily by investors and that they would say this
11 is the number; that's what the number is going to be. So
12 there were lots of numbers in there to let the investor
13 know it could be less than that; it could be more than
14 that, and that scenarios did indeed exist where that
15 number could be a billion dollars or more.

16 If you simply took the upper end of Dr. Bates'
17 range, which were expenditures estimated for the next ten
18 years, and ran that out to the year 2059, then you'd have
19 a number easily over a billion dollars. So the purpose
20 of that was to say don't rely too heavily on the specific
21 number. Read all of the material to know that this is a
22 very uncertain estimate that can go either way and can be
23 off by hundreds of millions of dollars.

24 Q. So when you're looking at a statement that
25 liabilities could be over a billion dollars, you're

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1 looking out over a 50-year time horizon. You talked
2 earlier about whether that was dollars of the day or
3 discounted in that present value. But that was a -- was
4 that a nominal or net present value number?

5 A. It was a nominal number. Dr. Bates' words were
6 value of the day. That wasn't doesn't mean anything in
7 particular to me. It was the total dollars that you
8 could spend over that entire period without any
9 discounting to present value.

10 Q. Did it include potential expenditures for claims
11 other than Mesothelioma claims?

12 A. At all times it was trying to deliver a message
13 about what total expenditures could be for asbestos
14 claims without regard to any specific type of asbestos
15 claim.

16 Q. We've heard a lot from the Committee and the
17 Futures' rep about the methodology and whether the
18 estimates of expenditures should actually be used by the
19 Court in this case to determine liability. I'm not so
20 sure they want to buy into the numbers management had in
21 their financial statements, but they have made that
22 point. What is your reaction to the concept that the
23 estimates for financial purposes will be instructive to
24 this court --

25 MR. SWETT: Objection --

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1 MR. CASSADA: -- in estimating liabilities?

2 MR. SWETT: -- the Committee's position, Your
3 Honor.

4 THE COURT: Overruled.

5 THE WITNESS: Well it depends on what you're
6 trying to estimate. Clearly, if you're trying to
7 estimate what payments would be in the tort system
8 without anything changing, then that's the kind of thing
9 that -- as Dr. Bates testified, that's the kind of thing
10 that he was doing in connection with the financial
11 statements: Taking the status quo and extrapolating to
12 the future using whatever other data points that he had
13 available to him. It's a completely different thing, I
14 believe and we believe, if you're trying to estimate what
15 the actual legal liability is for those claims.

16 Q. Right. Now Dr. Bates had a range within his
17 estimates, as I recall. Was he estimating at the lower
18 end of the range that things would stay the same in the
19 tort system?

20 A. Well I think as he -- I didn't hear all of his
21 testimony, but I've certainly talked to him about these
22 kinds of things at length. He had various scenarios.
23 The low end of his range had several factors that
24 affected that, including the fact that there would be a
25 return of information and dollars associated with the

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1 companies, the co-defendants that had filed for
2 bankruptcy during the bankruptcy wave. And then as you
3 moved up his scenarios, that was less and less a factor
4 in his scenarios. But he'd be the person that would have
5 to tell you how that worked in his models.

6 Q. Okay. Now, we're -- we are in bankruptcy. You
7 proposed a plan, the debtors have, and you're going to
8 talk about that a little bit later on. But what
9 relevance, in your view, do expenditures that Garlock was
10 making in the tort system have to expenditures to settle
11 claims under Garlock's plan of reorganization?

12 A. Well, as I said, I think a week ago Friday when we
13 touched on that briefly, I believe part of what can be
14 achieved through the bankruptcy process is you can --
15 it's two key factors that weren't present in the tort
16 system. Number one is transparency about the exposure
17 picture known to a claimant. That clearly affects the
18 value of that claim however you value it and whatever
19 kind of value you're putting on it. And the second one
20 is the cost to resolve the claims.

21 And, you know, it's -- I think we saw earlier in
22 my testimony and you saw from Dr. Bates' testimony that
23 when you're resolving claims and settling claims in
24 amounts far less than what you'd have to spend to win --
25 to defend the claims and win the claims, you're resolving

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1 them in an amount that's far less than that, then clearly
2 those costs are an important factor in the settlement.
3 So if you've got an opportunity through the bankruptcy
4 process to streamline some procedures, take out some
5 costs and do some other -- I think that's an important
6 purpose of bankruptcy. Then those claims are being
7 resolved in a whole different -- in a whole different
8 environment with a different cost structure.

9 Q. Thank you.

10 Your Honor, there is, I believe, one more subject
11 we can talk about before we will be moving on to
12 information that might be -- that would be deemed
13 confidential.

14 Mr. Magee, the Court has entered various orders
15 requiring Garlock and Garrison to produce documents that
16 have been referred to as MEAs. Can you describe what an
17 MEA is?

18 A. Well, MEA is short for Major Expense Approval. I
19 think it's short, really, for Major Project Expense
20 Approval but shortened to Major Expense Approval for the
21 acronym MEAs. And that was a form -- an old Coltech form
22 used when there was an expense, a project expense, that
23 required approval levels and signatures that was adopted
24 in connection with the asbestos litigation management.

25 Q. What relationship did you yourself have as General

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1 Counsel of EnPro with MEAs that related to Garlock's
2 asbestos litigation?

3 A. Well, as I think I testified earlier, there were
4 approval levels above which my signature was required in
5 order for a payment to be made. So, again, the Garrison
6 lawyers had approval authority up to a certain level.
7 Mr. Grant had approval authority at a higher level. So
8 where that was the approval level required, that expense
9 approval form would require the Garrison lawyer's
10 signature and then Mr. Grant's approval. At a higher
11 level, my approval was also required. So in a settlement
12 that required a payment at the higher level, my signature
13 would be on. And then there was still a higher level
14 that required the signature of the CEO of EnPro.

15 Q. Okay. Now in the course of settling claims -- and
16 these were MEAs that were generated in connection with
17 settlements. In the course of the process, when were
18 MEAs actually generated?

19 A. Prior to payment. In other words, at the end of
20 the time, Ms. Barry was the Accounting Director, the
21 Finance Director, at Garrison. She could not pay a
22 settlement without making sure that the required
23 approvals were noted on the Major Expense Approval form.
24 So if the approval was for X amount, she'd have to make
25 sure that the required folks' signatures were on the MEA

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1 in order to pay that amount, and then her predecessors
2 the same way. So that was the purpose of the form was to
3 make sure that nobody could just say oh, we've done a
4 settlement, so, Ms. Barry, please cut me a check for this
5 amount. She had to have in hand the Major Expense
6 Approval form to cut that check that demonstrated the
7 required signatures were on the form. So that got done
8 after settlement but before the check was cut.

9 Q. So when you say after the settlement, you mean
10 after the settlement decision?

11 A. Sure. That form would come -- if it was one -- if
12 it was a settlement I was involved in, then Mr. Grant
13 and I would have already discussed the settlement and I
14 would have already given the approval orally and then
15 that document would have followed later.

16 Q. So the MEA wasn't a document that you considered
17 in making a decision whether to approve a settlement?

18 A. Well, certainly, it was a document that I
19 considered and signed. I don't want to say it was
20 meaningless, but I would have already orally approved the
21 settlement before that MEA came to me.

22 Q. So was the purpose of the MEA to serve an
23 accounting function?

24 A. That was -- the ultimate purpose was -- the
25 ultimate purpose of the document was to have an

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1 accounting control so that the Director of Accounting,
2 the Director of Finance at Garrison, would have evidence
3 of the approval of the settlement before cutting a check
4 to pay the settlement.

5 Q. Your Honor, I think this is the point where we
6 would be moving into matters that have been designated by
7 the Committee and others as confidential.

8 THE COURT: All right. We'll have to ask anybody
9 who hasn't signed a confidentiality agreement, you will
10 have to leave. We'll open back up at the end of the
11 testimony.

12 (WHEREUPON, this portion of the transcript
13 has been redacted pursuant to an order
14 of the Court.)

15 MR. CASSADA: Are we ready to proceed?

16 THE COURT: Yes.

17 BY MR. CASSADA:

18 Q. Okay. Mr. Magee, I'd like to do a brief recap
19 since this is the third installment of your testimony.

20 I'm not going to recap everything, Your Honor,
21 just where we were when we were last here.

22 Mr. Magee, do you recall discussing the way
23 Garlock's settlements were allocated on an all-time
24 basis, subject to settlements of Mesothelioma claim?

25 A. Yes, I do.

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1 Q. Could you briefly bring us up-to-date as it
2 relates to Slide 4?

3 MR. GUY: Your Honor, Mr. Cassada if welcome to
4 do a recap. As of now, I think we're at 7.3 days. So if
5 he wants to give up time on his rebuttal, he's welcome
6 to.

7 THE COURT: All right. Go ahead.

8 THE WITNESS: I showed this slide through a series
9 of slides to show the number of different resolutions of
10 claims at different -- at different dollar levels for
11 Garlock all-time for resolving Mesothelioma claims. I've
12 just -- I've simply put the numbers on the slide now to
13 demonstrate that the one out of every 100 claimants who
14 received more than \$250,000 in total numbers was 251 out
15 of 22,650 -- 22,615 total resolutions.

16 Q. And then we also focused on the five years
17 preceding the bankruptcy petition.

18 A. We did just to show that even during that period
19 of time which, I think, I referred to as the "steroids
20 period." That even during that time, only two out of
21 every 100 received more than \$250,000.

22 Q. Okay. I noticed something else that maybe you can
23 describe what's going on. When we were back at all-time,
24 you had 27 resolutions without payment, and that
25 increased to 47. Can you describe what's going on there?

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1 A. Sure. The number of claims resolved without any
2 payment went from 27 percent to 47 percent. At the same
3 time, the number of claims being filed against Garlock
4 had increased tremendously. So, obviously, a big part of
5 those increasing claims were claims that didn't have --
6 didn't have merit against Garlock that we were able to
7 get resolved without any payment at all. So that
8 percentage went from 27 percent to 47 percent.

9 Q. Okay. And you had talked some about the concept
10 of a driver case, and we were focusing on the two in the
11 group of per hundred claimants there. What effect, if
12 any, did those drivers have on settlements at the lower
13 levels? And I would say people within the \$25,000 to
14 \$250,000, or even the \$1 to \$25,000 range.

15 A. Again, the driver cases -- that was a term that we
16 gave those cases because they drove the settlement
17 averages up. In other words, a claim was brought against
18 Garlock. Garlock was targeted. The exposure -- the
19 exposure testimony was geared toward Garlock. And that
20 claim became a claim that presented trial risk against
21 Garlock, and that claim was used in many instances to try
22 to get higher settlement values across a group of claims
23 or a number of claims, and in some cases drove settlement
24 values for years to come with that particular law firm.
25 So that's what we meant when we referred to it as a

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1 "driver" claim. So it had impacts -- depending on the
2 firm and the nature of that claim, it could have impacts
3 across all of the paid claims.

4 Q. And we described the MFA [sic] claims and the
5 claims that had actually been placed on the debtor's
6 response to request for admission identifying claims
7 where we had identified omissions that we believed
8 affected Garlock's settlement results. Of the -- you
9 said 161 claims within the five-year period preceding the
10 petition were -- were actually settled for over \$250,000?

11 A. Right. That's what this depicts. The two people
12 out of 100 on the last slide represented 161 out of 7,736
13 Mesothelioma resolutions in the five-year period 2006 to
14 2010. So that was 161 claims during that period.

15 Q. Can you tell us how many of those claims were --
16 are on the RFA-1 list?

17 A. Well that RFA list, as I understand it, has 205
18 Mesothelioma claims. And 72 of those are claims that
19 were resolved in that period at amounts higher than
20 \$250,000. So there was 72 identified that met in that --
21 in that group where there were identified inconsistent
22 exposure evidence between what was disclosed in the tort
23 system and what we were able to determine based on the
24 discovery in this case. And remember, those cases only
25 involved discovery from the DCPF trusts, the ten trusts

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1 paying claims from the Delaware Claims Processing
2 Facility and the bankruptcy ballots retained in several
3 bankruptcy cases. There were only 15 where we got the
4 further discovery.

5 Q. Okay.

6 A. So that's just 72 out of the ones on that 205
7 list.

8 Q. So the 15 are what we call the designated
9 plaintiff cases?

10 A. That's correct.

11 Q. Okay. So of the 161 cases, 72 have been reviewed
12 and placed on the RFA list?

13 MR. GUY: Your Honor, this is also almost
14 verbatim from testimony that we've already heard. We're
15 not going to get Mr. Magee off the stand if we go over
16 material that's been plowed twice.

17 THE COURT: Okay. Go ahead.

18 BY MR. CASSADA:

19 Q. So, the 89. Do we know the -- whether those
20 claims were affected by omissions of evidence?

21 A. Well, and that's why I wanted to repeat this
22 slide, Mr. Cassada, because I was afraid I might have
23 left an inference that 72 of 161 had inconsistent
24 exposure evidence and that 89 did not. That's not what
25 we're saying here. I'm sure some of the 89 did not. We

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1 have not done an exhaustive review of all the cases, so
2 I'm sure some of those 89 weren't included in the review.

3 Q. Okay. And I believe when we concluded with your
4 testimony last week we did conclude on this Slide 7?

5 A. That's correct.

6 Q. Could you summarize the situation with respect to
7 omissions for the 205 RFA-1 cases versus the 15
8 designated plaintiff cases?

9 A. That's what this slide is designed to demonstrate.
10 That of those 205 RFA-1 cases, on average, there were 8.9
11 omissions. And that's just from double checking against
12 the ballots and the ten DCPF trusts. And that 4.4 of
13 those omissions dealt with insulation company exposures.
14 And then in the 15 designated plaintiff cases where we
15 got full discovery that -- those average number of
16 omissions went to 18.9 total, and 13.5 companies with
17 insulation products were omitted.

18 Q. And the difference, the increase in the 15, that's
19 explained by the additional information?

20 A. Well, yes. Because those 15 are also in the 205.
21 So you can see they would be included in the first group
22 and the second group, but the difference being that there
23 was more discovery achieved for those 15 cases.

24 Q. Your Honor, may I approach the witness?

25 THE COURT: Yes, sir.

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1 MR. CASSADA: I have an exhibit.

2 BY MR. CASSADA:

3 Q. Mr. Magee, I handed you an exhibit marked
4 GST-8001. Do you recognize this?

5 A. I do.

6 Q. What is it?

7 A. Well this, actually, was generated, I believe,
8 from a Bates White database to demonstrate the RFA-1
9 cases. The RFA-1 cases had been developed separately by
10 Robinson Bradshaw in response to the request for
11 admissions received from the Committee in the case.

12 Q. This was generated from the Bates White analytical
13 database?

14 A. That's my understanding.

15 Q. The one that's been produced in this case?

16 A. That's my understanding. Yes.

17 Q. This shows omissions in the 205 cases?

18 A. It does. You see there's a column with the trust
19 filings -- I'm sorry, the trust filings and the ballots
20 that were made by the claimants, and then omissions and
21 omissions of insulation companies.

22 Q. Okay. So this is a summary. At the end, does it
23 have the figures set forth on Slide 7 --

24 A. I hope it does.

25 Q. -- showing the 8.9 average number of omissions and

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1 4.4 average insulation company omissions?

2 A. The 8.93 omissions and 4.39 insulation company
3 omissions it does.

4 Q. What was your reaction when you received this
5 information?

6 A. Well, I'll acknowledge I was a little surprised.
7 You know, we have suspected that there were omissions and
8 that we knew what was going on in driver cases, but I
9 would not have guessed that it was as extensive as it is
10 as portrayed by this analysis.

11 Q. Okay. I'd like to turn your attention to the 15
12 designated plaintiff claims. Line eight is a summary of
13 the specific claims. Can you describe what those claims
14 are and the firms they came from and settlement time
15 period, and how they were chosen?

16 A. Yes. In part, they were firms that were
17 identified through a review as firms who were significant
18 firms in the litigation who had some high dollar
19 resolutions and had significant numbers of claims showing
20 up on the RFA list. Obviously, we had been trying to get
21 some discovery on those -- on those things in general,
22 but we came back to the court and asked for specific
23 discovery with respect to a few cases drawn from these
24 five particular law firms to get the further discovery.

25 Q. Were these law firms that were able to negotiate

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1 higher than average numbers from Garlock?

2 A. They were certainly among the firms who negotiated
3 the higher settlements. Yes.

4 Q. Okay. Let me -- let's focus on a few claims in
5 particular. We've heard a lot about the Treggett case
6 and the Torres case and Phillips. Treggett was the high
7 jury verdict that Garlock suffered in Los Angeles in
8 2004?

9 A. Yes. It was the -- it was the highest verdict in
10 Garlock's history.

11 Q. And Torres was the last large verdict that Garlock
12 suffered?

13 A. Yeah. I believe, as I testified before, it was
14 one of the three adverse verdicts that Garlock took in
15 the last five-year period. It was the last adverse
16 Mesothelioma verdict that Garlock took. And it was on
17 appeal at the time Garlock filed Chapter 11.

18 Q. Okay. And the Phillips case. We've heard a lot
19 about that case. That was the big settlement. Is that
20 the largest settlement that Garlock paid, short of a jury
21 trial?

22 A. Yeah. I want to be -- make sure I'm specific
23 about my words here. It's by far the largest pre-trial
24 settlement that Garlock ever entered into. Yes.

25 Q. Okay. And these other cases are large

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1 settlements, some of them tried or settled during or
2 after trial; some of them settled before trial?

3 A. Yeah. Some of them settled during trial. Most of
4 them, with the exception of -- well, obviously, Torres
5 has not settled at all. Treggett settled after trial. I
6 believe the rest of them settled either during or before
7 trial.

8 Q. Okay. And for Treggett, let's focus back on that.
9 We got -- there's a legend up here. Green: Disclosed.
10 Red: Omitted. And for Treggett we've got two and 22. So
11 there were 22 omissions of exposure evidence in that
12 case?

13 A. Yeah, that's correct, 22 omissions of specific
14 companies who were later identified either to a DCPF
15 trust or in a ballot.

16 Q. Can you tell the Court about the Treggett case?

17 A. Yeah. This slide I prepared just to give a
18 summary of what happened in the Treggett case, or at
19 least the background for the Treggett case. It was, as I
20 said, by far the largest verdict ever against Garlock in
21 a full trial. Mr. Treggett was a Navy machinist's mate
22 and he worked on a nuclear submarine. He alleged
23 exposure on that submarine. He said 70 percent of his
24 time was replacing the gaskets and only three percent of
25 the time removing insulation. That was his testimony.

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1 Now his testimony changed from the time of his
2 deposition testimony to his trial testimony. He could
3 not disclose -- I mean he could not determine the types
4 of insulation that he was ever exposed to. In fact,
5 Garlock tried at trial diligently to demonstrate that it
6 was Unibestos and the type of asbestos that he was -- the
7 type of insulation asbestos he was exposed to on that
8 ship and in other places.

9 Unibestos was a -- was an Amphibole insulation
10 product that had 75 percent -- 70-75 percent of its
11 makeup was Amphibole insulation -- sorry, Amphibole
12 asbestos material, and it was specified for use of Navy
13 ships. So, obviously, Garlock knew that that was the
14 material on the ship and it spent time at trial trying to
15 demonstrate that that was the cause of the disease.

16 As this shows that Mr. Treggett -- this says
17 filed 16 trust claims, including four claims with trusts
18 responsible for amosite insulation products. So I guess
19 the other 16 trust claims filed and six ballots, I guess,
20 is what that would imply.

21 Q. We've heard argument by the Committee in this case
22 that Garlock didn't really need the plaintiff to tell him
23 what the exposures were because Garlock knew what was on
24 the site of where the plaintiff worked. Is this a case
25 where Garlock had evidence of what was used on the ships

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1 where Mr. Treggett served?

2 A. Yes, it was. And that's what's so frustrating
3 about this. If you'll turn to the next slide. Garlock
4 spent lots of time at trial trying to demonstrate that
5 that was the source of the disease. Mr. Treggett was
6 represented by Ron Eddins, then of the Waters and Kraus
7 firm. And in his closing argument, he argued over and
8 over that there wasn't --he had succeeded in keeping
9 Unibestos off the verdict form. And he argued over and
10 over that there -- Unibestos wasn't on the verdict form
11 because Garlock didn't bring the proof, despite bringing
12 in testimony about what would have been on the ship. But
13 we didn't have specific proof that Unibestos was on that
14 specific ship.

15 And he further testified -- this is what really
16 galled me about this case is that Mr. Eddins in his
17 closing argument actually testified to the jury that we
18 couldn't -- we couldn't do that because it's not true.
19 He made a representation that it was not true to the
20 jury. And he said there's not a single piece of evidence
21 that puts Unibestos aboard the boat. So not only did he
22 argue that we hadn't proven that; he told the jury that
23 it wasn't true. So that was very, very frustrating.

24 Q. Did Garlock learn later on --

25 A. We learned --

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1 Q. -- anything about what that particular
2 representation?

3 A. We learned that seven months earlier the Waters
4 and Kraus firm had voted a ballot in the Pittsburgh
5 Corning case on behalf of Mr. Treggett. We learned
6 that, obviously, in connection with this case. And in
7 there, obviously, signed an affidavit, or whatever the
8 form you'd call the form, under penalty of perjury
9 alleging that Mr. Treggett had been exposed to an
10 asbestos-containing product of Pittsburgh Corning,
11 Incorporation.

12 Q. Define term that he had "Pittsburgh Corning
13 exposure," which was defined to be exposure to Unibestos?

14 A. That's my understanding. That was Pittsburgh
15 Corning's product was Unibestos insulation.

16 Q. Yeah. We later learned from a 30(b)(6) witness of
17 waters and Kraus that that was Unibestos confirmed.

18 A. Correct.

19 Q. Outside Unibestos, did Garlock also argue that the
20 insulation on the ship, whether it was Unibestos or not,
21 that it was am amosite? That it had to be, because
22 that's what the insulation on a ship was?

23 A. Garlock did -- in fact, again, this is what's so
24 -- this is what's so frustrating. You know, there's lots
25 of questions being raised about whether this is really --

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1 this was really important to Garlock and whether this is
2 really how Garlock tried its case. And you can see this
3 is a transcript from Mr. Eddins' closing argument. And
4 you see the highlighted item there where he said, "You
5 see, they sought to talk about Unibestos throughout the
6 whole trial over and over and over." In other words,
7 Garlock was trying to demonstrate that presence of
8 Unibestos. And then at the end of this slide he's
9 talking about, "no blankets, no pads, no Unibestos, no
10 amosite."

11 Q. Did he characterize Garlock's position that there
12 was amosite or Unibestos on the ship in any other way and
13 call it hearsay?

14 A. Yeah. Again, you've put up here some -- a
15 transcript of his testimony. And again, he was --
16 obviously, he had succeeded in keeping Unibestos off the
17 verdict form and, obviously, also convinced the jury that
18 it wasn't true and that Garlock was just trying to blame
19 somebody else for something that he alleged was Garlock's
20 fault.

21 Q. So did -- in connection with this case, did you
22 learn about what exposures that Mr. Treggett had to
23 insulation and asbestos products of bankrupt companies?

24 A. We did. But before I get to that, if I could add
25 one other thing, I'd appreciate it.

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1 Q. Please do.

2 A. One other thing that really galled me about this
3 case that I didn't want to leave out is that in his
4 closing argument, Mr. Eddins also argued to the jury
5 that Garlock was making money on asbestos litigation. He
6 took a financial statement for a quarter where Garlock
7 had received more money in insurance reimbursements for
8 previous period payments than what it had paid in that
9 particular quarter. He published that to the jury and he
10 argued to the jury that it was all a big insurance scam
11 for Garlock and that they were making money on asbestos
12 insulation. I mean on asbestos. I'm sorry, on asbestos
13 litigation.

14 Q. Did Garlock appeal the Treggett verdict?

15 A. It did.

16 Q. Do you recall the grounds for the appeal?

17 A. There were a number of grounds for the appeal.
18 One of them, just like I think I testified earlier, it
19 was like the Blandford case which was overturned for this
20 reason. Dr. Longo did not testify in the case in chief
21 in the Treggett case but was brought in as a rebuttal
22 witness and played his Tyndall Light video in rebuttal in
23 this case.

24 Q. Did Garlock get a chance to rebut the Tyndall
25 Light video with the bare flange Tyndall Light video?

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1 A. It did not.

2 Q. Tell me what requirement there was in connection
3 with the appeal that Garlock had made in the case?

4 A. Again, what's frustrating about it, we were
5 confident and appellate counsel was confident we would
6 get a reversal on appeal. California had a rule,
7 however, that in order to appeal a verdict you had to
8 post a bond at 150 percent of the amount of the verdict.
9 The verdict in this case -- Garlock's share of the
10 verdict, it got a 40 percent share of the verdict, was
11 about \$9 million. It also had been assessed \$15 million
12 of punitive damage; it had never paid a punitive damage
13 award in the past. So that was a total of \$24 million.
14 And in order to appeal, Garlock had to put up a \$36
15 million bond.

16 Garlock didn't have a bonding facility that would
17 post that kind of bond. EnPro didn't have a bonding
18 facility that would post that kind of bond. So we had to
19 provide cash collateral for the pendency of the appeal
20 and, in essence, had to put \$36 million on the sidelines
21 to be collateral during the process of the appeal.

22 Q. And that case was eventually settled?

23 A. It was settled. Yes. It was settled about a year
24 and a half later.

25 Q. You later learned that there -- that Mr. Treggett

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1 was going to file 16 trust claims?

2 A. Yes.

3 Q. And file four ballots in bankruptcy cases based on
4 certifications of exposures to products.

5 MR. SWETT: Objection, Your Honor. He is making
6 assumptions that are not in evidence that are
7 characterizing certain matters as exposure evidence when
8 that is in fact a hotly disputed point. He's leading,
9 and we're letting him do that, but it's not appropriate
10 to allow him to lead with loaded questions. He should
11 neutralize his language so that it comes from the
12 witness's mouth and not his.

13 THE COURT: All right. We'll sustain the
14 objection to characterization.

15 BY MR. CASSADA:

16 Q. You later learned about 16 trust claims?

17 A. Well that -- I believe you admitted this document
18 into evidence, Mr. Cassada. And if you look on this
19 document, this is GST-8001, Mr. Treggett's on this
20 document. Mr. Treggett filed claims against seven DCPF
21 trusts, five ballots. And in that had -- in addition to
22 that had 12 omissions, including five insulation company
23 omissions. I believe that probably got updated for this
24 slide, but I'd have to get -- see the detailed
25 information.

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1 But we knew they were -- to be specific, there
2 were trust claims filed on behalf of Mr. Treggett and
3 there were ballots filed -- for instance, Pittsburgh
4 Corning we talked about. You can't file a trust claim in
5 Pittsburgh Corning because the plan has not yet been
6 confirmed. So if you have a claim against Pittsburgh
7 Corning, all you would be able to do at this point would
8 be able to have voted your are ballot in this case.
9 The same is true with W.R. Grace at this point.

10 Q. Okay. What difference, if any, would the
11 disclosure of the information contained in the trust
12 claims and the ballots have made in the outcome of the
13 Treggett case?

14 A. Well I can't sit here and tell you what difference
15 it would have made to a jury, but it obviously would have
16 made a big difference in the evidence. Mr. Eddins
17 certainly could not have testified to the jury that
18 Unibestos was not on the ship if the Court knew and if
19 the jury was allowed to know that just seven months
20 earlier there had been a ballot filed in the Pittsburgh
21 Corning case on behalf of Mr. Treggett.

22 If the jury had been permitted to know that Mr.
23 Treggett was going to file trust claims against lots of
24 insulation defendants, then all of a sudden it wouldn't
25 have been Garlock -- you saw Mr. Eddins' words about how

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1 Garlock's the one trying to point to amosite; Garlock's
2 the one trying to blame somebody else. If that had been
3 the case, the jury would have known that Mr. Treggett
4 acknowledged Amphibole insulation exposure and it
5 wouldn't have been just Garlock trying to demonstrate it.
6 It would have been coming from the claimant's mouth
7 himself.

8 Q. Let's talk about another case, the Phillips case.
9 Can you talk about what the Phillips case was about?

10 A. Yeah. I prepared a slide here with just a few
11 little details. Phillips worked at a Johns-Manville
12 distributor named Triplex but only while he was in high
13 school. You know, a part-time high school job, summer
14 job, and went on to be an accountant. That was a family
15 business. His family had founded Triplex. And one thing
16 that was fairly unique, at least unique in a Garlock
17 case, was that Mr. Phillips had a high crocidolite lung
18 fiber burden. So he had had crocidolite exposure and
19 extensive crocidolite exposure.

20 He alleged that the sole source of his crocidolite
21 exposure was Garlock gaskets. That was certainly very
22 implausible to Garlock, but he claimed that his only
23 other asbestos exposures were at Johns-Manville
24 Chrysotile gaskets. Johns-Manville, I think there's been
25 testimony here, was the maker of over 60 percent of all

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1 asbestos products and significant numbers of Chrysotile
2 and amosite products. But the testimony in that case was
3 that, at least in the pretrial discovery, was that no
4 Chrysotile Johns-Manville -- I'm sorry, so no crocidolite
5 Johns-Manville products came through Triplex; that when
6 somebody wanted a crocidolite from Johns-Manville, it
7 would be direct shipped or drop-shipped to customers and
8 it would not be handled in the Johns-Manville Triplex
9 facility.

10 So the Triplex witnesses supported Mr. Phillips'
11 account that the crocidolite exposure he would have had
12 would have been Garlock gaskets. That's notwithstanding
13 the fact that neither Garlock nor Triplex had any records
14 that Garlock products were purchased by Triplex during
15 that time period. They had records that at a later time
16 period they purchased Garlock products, but not during
17 that time period. But that was the -- that was the
18 testimony and that's what Garlock faced in that case.

19 Q. And that case was eventually settled?

20 A. It was.

21 Q. Did you approve that settlement?

22 A. I did approve that settlement.

23 Q. What was the settlement amount?

24 A. \$2.5 million. Again, it was by far the largest
25 pretrial settlement that Garlock had ever entered into.

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1 It was presented to me and recommended to me as a one of
2 a kind, never before seen anything like this; somebody
3 who cut gaskets, claimed it was crocidolite gaskets, had
4 crocidolite lung fiber burden, and there was no evidence
5 we could develop that there was other crocidolite product
6 exposure. Certainly, there was some that we could
7 speculate given that this was a Johns-Manville
8 distributor, but there wasn't anything we could prove.
9 So that's -- so it was going to Mr. Phillips and the
10 employer, Triplex, versus Garlock at trial. And for that
11 reason, it was settled.

12 Q. Now have you subsequently learned anything in this
13 case about Mr. Phillips' exposures that would have
14 impacted your views about that settlement?

15 A. We have, and we've prepared a slide for that.
16 Again, he claimed only asbestos products were Garlock and
17 Johns-Manville and that the Johns-Manville gaskets
18 weren't crocidolite. And then he filed trust claims
19 after the settlement against Johns-Manville and 14
20 others, including four for individual review.

21 I believe, Mr. Cassada, you deposed Mr. Finley,
22 who was responsible for filing those trust claims at
23 Williams Kherkher, who testified that he never filed a
24 trust claim if he didn't have information about exposure
25 to the product.

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1 MR. SWETT: Objection. That is an outright
2 misstatement of the man's testimony.

3 THE COURT: We'll sustain the objection.

4 BY MR. CASSADA:

5 Q. Well, we'll let that testimony speak for itself.
6 What else did would you learn?

7 A. We learned that, again, the crocidolite-claimed
8 exposure. And then we -- you see the ballots were
9 submitted ASARCO, CAPCO, LAQ, one even before the
10 settlement. We know that CAPCO made crocidolite pipe.
11 There's now argument over what that -- what that ballot
12 meant, whether it meant CAPCO crocidolite exposure or
13 whether it was based on LAQ exposure. But in any event,
14 that ballot was -- had been filed before the settlement
15 was not disclosed to Garlock.

16 And again, I already talked about how the case
17 that was Phillips against both Triplex and Garlock had, in
18 fact, was Phillips and Triplex working together against
19 Garlock. In the course of discovery, there were e-mails
20 discovered where lawyers for Mr. Phillips working with
21 and coaching testimony from employers of -- employees of
22 Triplex.

23 Q. Now you said that this case had been described to
24 you as a once in a lifetime case or something to that
25 effect?

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1 A. It was. Looking back even today, you know, anyway
2 we can't look back. But yes, it had been described as a
3 one of a kind case and in that connection, never seen
4 before. And I think Mr. Hennessy said in his deposition
5 that he, in his 16 years, had never seen anything like
6 it. Obviously, the settlement spoke to that. And so we
7 paid the settlement and moved on.

8 Q. Okay. And this was a one in a lifetime case, and
9 it you just happened to be that Williams Kherkher law
10 firm that brought it?

11 A. Yes. And then a mere three months later here
12 comes another one. The Torres case from the Williams
13 Kherkher law firm. And once again, it's a very similar
14 profile except this time it's a pipefitter. But this is
15 a pipefitter -- and Mr. Torres didn't speak a whole lot
16 of English, but he knew two words of English for sure and
17 those were "Garlock" and "7705," 7705 being the Garlock
18 product number for the -- for its crocidolite gaskets.

19 He claimed his only asbestos product exposure was
20 to Garlock crocidolite gaskets. His trust claims that he
21 ultimately filed alleged that he had been exposed to raw
22 asbestos fibers. Obviously, we've seen a gasket and we
23 know that that's not what that could be talking about.

24 Q. Did you learn anything else about trust claims
25 that Mr. Torres filed?

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1 A. Yeah. The day before he was deposed, his
2 attorneys had filed a Babcock and Wilcox trust claim that
3 was eventually paid. At his deposition, Mr. Torres
4 denied any knowledge of Babcock and Wilcox. So that's
5 one day before when -- one day before the trust claim had
6 been filed; one day before he denied any knowledge of
7 Babcock and Wilcox.

8 Q. By the way, do you know what explanation the
9 Williams Kherkher firm had about that Babcock and Wilcox
10 claim and why it wasn't disclosed?

11 A. I don't recall.

12 Q. Okay. What else did you learn from the trust
13 claim?

14 A. This last bullet that you just pulled up there.
15 After the trial, there was an Owens Corning -- and we
16 know that Owens Corning, obviously, is a manufacturer of
17 Kaylo insulation material. He filed a Owens Corning
18 trust claim that was later paid. At trial his attorneys
19 disputed that he was exposed to Kaylo, to Owens Corning
20 products, and told the jury that Owens Corning should not
21 be assigned any liability.

22 Q. Now, did the Torres case settle? I believe you
23 said it was the last major verdict.

24 A. It did not settle. Mr. Torres achieved a verdict
25 against Garlock for -- I can't remember the exact amount,

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1 but over a million dollars.

2 Q. Do you recall whether Garlock was assigned a 100
3 percent responsibility for the verdict or whether it was
4 just assigned partial --

5 A. I believe it was assigned 100 percent
6 responsibility.

7 Q. Finally, can you talk about the Charles White
8 case?

9 A. Yes, I can. It's the next case on here and the
10 last one I'm going to talk about, because -- but one I
11 wanted to talk about because it's a good example is the
12 Charles White case from the Simon Eddins firm. Simon
13 Eddins was the firm that Ron Eddins had left -- Ron
14 Eddins, you remember, was the lawyer who was with Waters
15 and Kraus and had tried the Treggett case. By this time,
16 Mr. Eddins is a member of the Simon Eddins law firm, one
17 of the founding members, and they represented Mr. Charles
18 White in this -- in this case.

19 Mr. White had alleged that, again, that he
20 resulted from exposure -- his Mesothelioma resulted from
21 exposure to gaskets. He alleged that he worked as a
22 handyman for Norfolk Navy Shipbuilding Dry Dock next to
23 the Norfolk Navy Shipyard -- the Norfolk naval shipyard
24 -- and that equipment was brought to him in his shop and
25 that he worked on them in his shop and that he was not

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1 aboard ships and that he didn't work on ships.

2 His wife later attested that he told her that
3 exposure to pipe insulation aboard ships was what
4 contributed to his Mesothelioma; she said that in an
5 affidavit on a trust claim. He also didn't disclose
6 asbestos exposure on Coast Guard vessels and had -- and
7 later made trust claims saying that he was exposed on
8 Coast Guard vessels. This next bullet kind of compares
9 and contrasts those things this next slide.

10 Again, at his deposition he didn't work at the
11 Norfolk Navy Shipyard. His attorney and spouse filed
12 affidavits with the Western and J. T. Thorpe trust that
13 said he worked at Norfolk naval shipyard. Said he never
14 went aboard ships during his deposition. And then his
15 attorney and spouse said he worked aboard these two
16 ships. The USS Mountrail and the USS Sea Lion.

17 And then finally, I think there's one more about
18 Coast Guard exposure. He said he never saw anyone
19 removing any insulation while in the Coast Guard. That
20 was in his deposition. In his trust claim affidavit said
21 he was exposed to insulation as a fireman in the Coast
22 Guard. In two completely different stories, one at his
23 deposition and one in the trust claims affidavit.

24 Q. If I understand your testimony correctly, at his
25 deposition he said he was in a machine shop removing

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1 gaskets?

2 A. That's right. And the equipment was brought to
3 him. He worked on them in the machine shop and removed
4 the gaskets and replaced the gaskets and the equipment
5 there and then sent the equipment back to the ship.

6 Q. Do you recall -- this you testified was a case
7 handled by the Simon Eddins law firm?

8 A. It was. And this is Mr. Simon at his deposition.
9 And he mentions that very specific case and that fact
10 pattern that was alleged to be the case in his
11 deposition.

12 (Video begins playing at 3:47 p.m.)

13 (Video stops playing at 3:49 p.m.)

14 BY MR. CASSADA:

15 Q. That was, in fact, the position taken during the
16 case?

17 A. Yes. That was taken during the previous slide.

18 Q. So, again, to summarize the 15 designated
19 plaintiff's cases. I believe you testified that at the
20 end of the day there were 19 exposures that were not
21 disclosed in these cases; only two that were disclosed?

22 A. That was on average for these 15 cases. 19
23 exposures not disclosed and two that were disclosed.

24 Q. Did the disclosures of this kind of evidence
25 affect the value of the case when Garlock is trying to

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1 determine whether to try or settle the case?

2 A. Absolutely, Mr. Cassada. We talked about that.

3 What this case is all about is Garlock demonstrating that
4 its product didn't cause disease but, moreover, that
5 other products did; that dangerous insulation products
6 were what did cause the disease. So, you know, and
7 you've heard the reference to Judge Batchelder's analogy
8 of the bucket to the ocean.

9 And as I testified before, Garlock needed to
10 demonstrate both that its product was the bucket and also
11 that the ocean was present. So that was very important.
12 And if Garlock wasn't going to be able to demonstrate
13 that at trial and demonstrate that through acknowledgment
14 from the claimant, then it was going to be a much more
15 difficult case for Garlock to prevail on by showing the
16 bucket and the ocean. If the claimant wasn't
17 acknowledging the ocean, Garlock was still going to try
18 to show it and do everything it could to show it, but it
19 was going to be much more difficult and it was going to
20 present trial risk.

21 Q. We just heard Mr. Simon acknowledging that a
22 common theme in Garlock's cases as a Chrysotile defendant
23 was finding evidence of Amphibole exposure and pointing
24 to that as the cause of the disease /

25 A. Mr. Simon said that. The lawyers that

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1 represented Garlock have testified to that. Other
2 plaintiffs' lawyers that were deposed in this case have
3 testified to that. I don't think there can be any real
4 debate as to whether Garlock's approach to trials -- you
5 saw Mr. Eddins. He talked about that in his closing.
6 Garlock's approach to trials was to demonstrate that its
7 product didn't cause the disease and that the dangerous
8 insulation products that was there, coincident with this
9 product, which demonstrated that was what did cause the
10 disease.

11 Q. And can you describe in more specifics exactly how
12 not having that evidence impacted Garlock in the 2000s,
13 and particularly in the second half of the 2000s?

14 A. Well I put here Judge Posner's model once again
15 just to demonstrate how that affects every element in the
16 calculation. Obviously, we showed earlier how much more
17 expensive it was to try a case in the 2000s than in the
18 '90s when that information was readily acknowledged by
19 the claimants. It increased Garlock's defense costs,
20 which is that orange box significantly. It had to bring
21 in folks like Captain Wassun or other experts. It had to
22 do much more with its case to try to demonstrate that.
23 It had to work a lot harder and its lawyers had to spend
24 a lot more time to develop the information. Moreover, it
25 also created, and I think I referred to it last time as

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1 an illusion of liability, but real trial risk from that
2 illusion of liability. And it affected both of these
3 boxes.

4 If Garlock was going to be found responsible, it
5 was going to get a larger compensatory award share
6 because those other companies weren't going to be present
7 in the courtroom or on the verdict form if folks like Mr.
8 Eddins were successful in arguing about the products and
9 keeping them off. And, obviously, the plaintiff's
10 likelihood of success was going to increase significantly
11 with that kind of profile. So it impacted all three
12 elements of the formula.

13 Q. Did the lack of that evidence impact Garlock's
14 settlements in the 15 designated plaintiff cases?

15 A. Well, it -- the ones of the 15 designated cases
16 that were settled -- remember, I think in the 15
17 designated cases there's at least one and maybe we saw
18 two trial cases, both Treggett and Torres are in that
19 list and they went to verdict. But the others --
20 obviously, it -- any time that fact pattern emerged, it
21 would tend to drive up potential settlements. Sometimes
22 maybe not. Sometimes Garlock might have still been
23 successful in holding the line on settlements, but
24 certainly they were used to try to drive settlement
25 amounts up.

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1 Q. Would it impact cases outside of the cases
2 themselves that you call driver cases?

3 A. Certainly. I would say that Treggett was a driver
4 case for cases from that firm, both the Waters and Kraus
5 firm, the firm that Mr. Eddins moved to, the Simon
6 Eddins case, and lots of other cases that had that
7 profile because the Treggett case had resulted in such a
8 large verdict. It, in itself, drove settlements higher.
9 It at least made Garlock willing to -- not only had that
10 happened and the verdict happened, but Garlock had all
11 that money sitting on the sidelines. So I'd say that the
12 Treggett case was sort of the driver case of all driver
13 cases.

14 Q. So you were talking about how you didn't
15 understand how there can be a serious dispute about
16 whether this evidence and the lack of the evidence
17 affected settlements and outcomes, and you referred to
18 the testimony of lawyers who represented claimants
19 against Garlock.

20 A. I believe we've got a couple more clips just to
21 show that they've acknowledged that that indeed was what
22 the cases were about.

23 Q. Now, this is Mark Iola. Who is Mark Iola?

24 A. Mark Iola's a lawyer who negotiated for the Waters
25 and Kraus firm, the settlements between Garlock and the

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1 clients of the Waters and Kraus firm. He is not with
2 that firm at this point but he was the negotiator. He
3 and Mr. Glaspy, Mr. Glaspy who testified earlier in the
4 case -- not this week but a year or so ago -- was
5 Garlock's western regional counsel. And he and Mr. Iola
6 would have negotiated the Waters and Kraus cases and
7 settled, and they would have been the ones that would
8 have negotiated those settlements.

9 Q. So Mr. Iola negotiated and settled high value
10 cases with Garlock?

11 A. Yeah. Waters and Kraus was a Mesothelioma shop
12 and tended to get higher value cases, so they tended to
13 be higher value. But he negotiated all of Waters and
14 Kraus' cases in the years he was negotiating those with
15 Mr. Glaspy.

16 Q. Okay. Well let's -- we have testimony here about
17 what he says about the importance of alternative and
18 bankrupt exposure to Garlock's cases.

19 (Video begins playing at 3:after p.m.)

20 (Video stops playing at 3:57 p.m.)

21 BY MR. CASSADA:

22 Q. Who is Ben Shein?

23 A. His name is with the firm Shein Law Center, and he
24 had several Mesothelioma cases over the years against
25 Garlock.

Direct - Magee

1 Q. Is this the Ben Shein who was the lawyer in the
2 Golini case where the 14 affidavits were signed before
3 the complaint was filed and not disclosed?

4 A. That's correct. The Golini case, the Homa case;
5 there's some other cases that are in that 15 -- I think
6 there were either three or four in the 15 that were
7 Mr. Shein's cases.

8 Q. I think we saw earlier testimony from Mr. Shein
9 saying that it was not his job to identify exposures for
10 the defendants, that he focused on viable defendants.

11 A. That's correct.

12 MR. SWETT: Objection to the characterization to
13 the testimony.

14 THE COURT: All right. Sustained.

15 (Video begins playing at 3:58 p.m.)

16 (Video stops playing at 3:59 p.m.)

17 BY MR. CASSADA:

18 Q. Mr. Magee, can you describe what it is that
19 Garlock hopes to accomplish in this Chapter 11 case?

20 A. Well, I think we hope to accomplish several
21 things. We hope to accomplish certainty and finality,
22 first of all, with respect to the asbestos litigation.
23 And fairness. You know, fairness for Garlock compared to
24 other companies who have been through the process. We
25 would like to get a resolution that would end the

Direct - Magee

1 litigation for Garlock and that would be fair. For
2 instance, we know that -- our view of analyzing things
3 were that two things happened in the W.R. Grace case that
4 were very positive for Garlock's ability to achieve those
5 goals in its case.

6 First of all, we know that that case settled at an
7 amount that's 25 percent of the amount that Dr. Peterson
8 said was the liability of W.R. Grace in that case. And
9 secondly, and most importantly to Garlock, there really
10 have been no bankruptcies where, like Garlock, the
11 bankrupt company's product was a low-dose product where
12 the defendant alleged that it didn't cause disease.

13 W.R. Grace did take that position with respect to
14 one of its products, Zonolite attic insulation product.
15 And in that case there was a determination that its
16 Zonolite product had not been proven a cause of asbestos
17 disease. So that product was determined not to have
18 caused disease. So, we hope to get a fair result that
19 mirrors the result that was achieved in the W.R. Grace
20 case.

21 Q. When you say that the asbestos claimants took --
22 you said they took a percentage of Dr. Peterson's
23 estimate of what the expenditures would be in the tort
24 system?

25 A. Well, you know, both of those things,

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1 Dr. Peterson's report and the amount of the settlement,
2 are public information. Those two things, it's just math
3 to determine that it's a fraction of that estimate. And
4 despite that, and with that, W.R. Grace was able to keep
5 more than a billion -- I think it's up to about \$4
6 billion of equity for its equity holders.

7 MR. GUY: Objection, Your Honor. We're not
8 talking about Grace; we're not talking about Zonolite
9 attic insulation. We are talking about Garlock.

10 THE COURT: Okay. I will overrule it.

11 BY MR. CASSADA:

12 Q. Do you have knowledge about whether the asbestos
13 claimants voted to accept a plan that paid a small
14 fraction of Dr. Peterson's tort system estimate?

15 A. I know that the W.R. Grace plan was approved by
16 the asbestos claimants.

17 Q. Okay. We've heard from Dr. Bates about Garlock's
18 proposed plan of reorganization and how it worked and his
19 estimate of the expenditures under the plan. Does
20 Garlock's plan address the transactions caused and
21 problems that Garlock experienced prior to its case in
22 obtaining evidence of alternative exposure?

23 A. It does. And I think we can go ahead and show
24 this whole slide that we showed at the end of my
25 testimony last Friday. Again, the plan through the Case

Direct - Magee

1 Management Orders proposed in the plan, and the
2 provisions in there, would require transparency about
3 known exposures, exposures known to the claimant and the
4 claimant's lawyers. And it would eliminate the excessive
5 costs and expenses by having a matrix settlement view
6 that Dr. Bates has testified that claimants would accept,
7 especially in light of the transparency that's required
8 that would take up a significant amount of the cost out
9 of the resolution process.

10 And again, it would provide expeditious and fair
11 payments. We talked about that before, \$270 million for
12 claimants who identified contact with Garlock products;
13 most of that money to the ones in Mr. Henshaw's contact
14 groups one and two who had the most exposure to Garlock
15 products, notwithstanding the fact they also would have
16 had significant exposure to insulation products. Still,
17 they were the ones that had the most exposure to
18 Garlock's products, and Garlock's plan would pay them.

19 Q. What basis for you -- do you have for believing
20 that the plan would be successful if claimants would take
21 the payments?

22 A. Well, we have Garlock's entire history where those
23 types of settlements were accepted by claimants in
24 environments where there's transparency about all known
25 exposures. We've got the history of the '90s. We've got

Direct - Magee

1 the history even into the 2000s for a majority of
2 Garlock's claims. You know, my view is that most people
3 want to be honest and want to tell the truth and want to
4 tell you what's going on and that most claimants
5 continued to do that. And that's why most resolutions
6 that Garlock had continued to be low dollar resolutions
7 and that claimants would also accept these payments,
8 because they would be -- they would look much like those
9 -- in fact, they'd be much more than the amounts that
10 were paid in the 1990s to those claimants.

11 Q. And does the plan offer a generous payment to the
12 once in a lifetime claimant, assuming that one exists and
13 comes forward to get a payment?

14 A. Dr. Bates showed that it has not only a generous
15 payment to somebody that might have that profile but also
16 a contingency fund for people if it turned out to be more
17 than one or several of those kinds of claimants.

18 Q. Okay. Your Honor, if I might confer for a moment.
19 I believe I may be complete.

20 THE COURT: Okay.

21 MR. CASSADA: That's all I have, Your Honor. I'll
22 pass the witness.

23 THE COURT: Let's take a break until 4:15.

24 (Off the record at 4:05 p.m.)

25 (On the record at 4:18 p.m.)

Cross - Magee

1 THE COURT: Okay, Mr. Guy.

2 MR. GUY: Your Honor, I don't believe I have
3 anything that's confidential. So the parties outside
4 asked if I was going to --

5 THE COURT: Okay.

6 MR. GUY: I think they came back in.

7 (Back in open court.)

8 THE COURT: Okay. Is everybody back in? Good.
9 I see somebody's leaving you don't have to leave. All
10 right.

11 MR. GUY: I'm not offended.

12 THE COURT: He heard you were going to be asking
13 questions, so he got up and left.

14 MR. GUY: Happens a lot.

15 (Laughter.)

16 THE COURT: Okay.

17 **CROSS-EXAMINATION**

18 BY MR. GUY:

19 Q. Mr. Magee, my name is Jonathan Guy. As you know,
20 I represent the future claimants representative,
21 Mr. Grier. I've got a couple of followup questions and
22 then I want to get into my cross. But one of the
23 immediate followup questions is, and I think the door's
24 now been opened, do you know the multiplier to apply to
25 the liability of meso claims so that we can include the

Cross - Magee

1 other claims?

2 A. I'm sorry?

3 MR. CASSADA: Your Honor, this is not a
4 Mesothelioma trial and doesn't include any other claims.

5 MR. SWETT: It's not a Mesothelioma trial but it
6 is a Mesothelioma estimation.

7 MR. GUY: Your Honor, I asked this question
8 before of Dr. Bates; Mr. Cassada objected --

9 THE COURT: If he knows what you're talking about.

10 THE WITNESS: I'm just not sure what you're asking
11 me.

12 BY MR. GUY:

13 Q. Well that's because it was obviously inartfully
14 posed. Let me try again. Do you remember when Dr. Bates
15 was asked: This is the number of meso claims, but you
16 also have other claims asbestotics, lung cancers; what
17 would with the multipliers? 1.06? Is it 1.15? Do you
18 remember that?

19 A. Do you mean can we break down the --

20 Q. How much more is the total when you include in the
21 other claims, the non-meso claims?

22 A. Well, let me try.

23 Q. If you know?

24 A. Let me try. I think -- I think Dr. Bates'
25 objection to your numbers were that it was total expenses

Cross - Magee

1 and just Mesothelioma claims. And if you're asking me,
2 can we break down the total expenses by disease? In
3 other words, how much of those is expenses were spent for
4 Mesothelioma claimed defense, how much for other disease
5 claims, I've never seen that broken down that way. It
6 might be able to be broken down that way. We can
7 certainly ask Ms. Barry at Garrison if she has the
8 information that way. I've only seen the total expense
9 number, which is what you showed, but that's the total
10 expense number for defending all the claims and not just
11 the Mesothelioma claims.

12 Q. So in all your conversations with Dr. Bates and
13 anyone else for that matter, because you've sort of
14 talked to a lot of issues, you have no idea one way or
15 the other as to whether it should be a multiplier of six
16 percent, 15 percent, 20 percent?

17 A. I just don't know what you mean by a "multiplier,"
18 Mr. Guy.

19 MR. CASSADA: Your Honor, I'm going to object.
20 They're talking about two entirely different things.

21 MR. GUY: I'll try again, Your Honor.

22 THE COURT: Okay.

23 MR. CASSADA: Again, I think he's asking about an
24 estimate.

25 THE WITNESS: I'll try to understand what you're

Cross - Magee

1 asking.

2 BY MR. GUY:

3 Q. I'll try one more time. And if we don't get it,
4 I'll move on. You know that there's a pool of
5 Mesothelioma claims; correct? A total amount -- let's
6 say the number is 500 million.

7 A. And that number is the amount paid to resolve
8 Mesothelioma claims, is that what you're talking about?

9 Q. Correct.

10 A. Yes. Okay.

11 Q. And in your financial statements you actually
12 included amounts to address all pending asbestos claims;
13 correct? Do you remember that?

14 A. Okay.

15 Q. Including Mesothelioma?

16 A. Right. Right.

17 Q. Plus lung cancers?

18 A. I understand what you're saying. The estimate
19 included all claims including within the estimate. Yes.
20 The estimate itself, now that's separate and apart from
21 defense costs. The estimate of future expenditures
22 certainly can be broken down by disease.

23 Q. So my question to you is, Dr. Bates advised the
24 Court he thinks the total number for Mesothelioma claims
25 is \$125 million. What percentage would you add to that,

Cross - Magee

1 if you know, to address all the other claims? The lung
2 cancers the asbestotics, etcetera, if you know.

3 A. Again, Mr. Guy, I don't think that's a simple
4 calculation. Because, as you know, there's no question
5 that all those other diseases are dose respondent and I
6 don't think there's any question that we're talking about
7 a low dose product here. So I don't think it's that
8 simple. Now if you're asking me what percentage of
9 recent claims, Mesothelioma claims for payment, that's
10 something that's calculated the past. If you're asking
11 me what can be estimated for the future, I don't have a
12 number for you.

13 Q. Do you remember Dr. Bates saying he thought the
14 multiple was 15 percent?

15 A. I was not here for much of Dr. Bates' testimony.

16 Q. At his deposition.

17 A. Okay. What was he talking about? I'm sorry.

18 Q. Multiplier.

19 MR. CASSADA: I don't believe he said that.

20 MR. GUY: I'll move on, Your Honor.

21 THE WITNESS: I'm not trying to be difficult. I
22 really don't understand what you mean by a "multiplier,"
23 Mr. Guy.

24 MR. GUY: I know you're not trying to be
25 difficult.

Cross - Magee

1 We'll move on, Your Honor.

2 THE COURT: Okay.

3 BY MR. GUY:

4 Q. Mr. Magee, what I want to cover today is why
5 we're here. I want to cover what we know, and I want to
6 cover where we're going. Okay?

7 A. Sure.

8 Q. So I want to start with why we're here. You're
9 General Counsel for EnPro; correct?

10 A. I am. Sorry. I'm not any longer. I think I've
11 testified I gave up that title. I'm still Senior Vice
12 President to focus on this case, but I'm no longer
13 General Counsel for EnPro.

14 Q. You act as a lawyer for EnPro?

15 A. I do. Yes.

16 Q. You went to the esteemed institution at Chapel
17 Hill which, I think, Judge Hodges went to as well.

18 A. I like to think of it that way.

19 Q. And you went to law school there too.

20 A. I did.

21 Q. And you were in private practice at the
22 predecessor of Robinson Bradshaw?

23 A. That's correct. And it was Robinson Bradshaw when
24 I was still there. Yes.

25 Q. Is it true you consider yourself a commercial

Cross - Magee

1 lawyer and not a litigator?

2 A. Absolutely.

3 Q. So you deal with contracts; correct?

4 A. Some. Most of my background was with securities
5 law and mergers and acquisitions. Some contract. But
6 commercial and corporate law. Yes.

7 Q. You're very familiar with FASB-5. You talked
8 about that.

9 A. I am. Yes.

10 Q. And do you report to the CEO on the asbestos
11 issues, that Mr. McCannon.

12 A. I report to him on all issues. Yes.

13 Q. As inside counsel, are you bound by the same
14 ethical rules that outside counsel are bound by?

15 A. I'm bound by the same code of professional
16 conduct.

17 Q. So you owe a duty to zealously represent EnPro?

18 A. I do. Yes

19 Q. You want the absolute best possible result for
20 EnPro; right?

21 A. I want the best result possible that EnPro is
22 entitled to. Certainly.

23 Q. There's absolutely nothing wrong with that, sir.
24 But that's what you want, correct, the best possible
25 result?

Cross - Magee

1 A. I think I talked about what I wanted. I wanted
2 certainty, finality and fairness.

3 Q. The best possible result for EnPro here is to
4 maximize its equity; right?

5 A. That would be the best possible result for EnPro's
6 shareholders certainly. I think the best result for
7 EnPro here would be a result that achieved certainty and
8 finality and fairness; that got this behind it once and
9 for all at an agreeable price.

10 Q. And to get the maximum possible equity, that means
11 the minimum amount put in a trust to address asbestos
12 claims; correct?

13 A. That's what that would mean, but I didn't agree
14 with your statement of that's what we were after here.
15 Obviously, I've said -- I've said before and we've said
16 that we want -- we want a consensual resolution that's
17 fair to everybody.

18 Q. Now part of what you want is a 524(g) injunction
19 for EnPro; right?

20 A. That would be our preference. Yes.

21 Q. So, putting aside Garlock for a minute, no one
22 could sue EnPro anymore in the future in anything that
23 related to asbestos.

24 A. That would be our goal. Yes.

25 Q. And you would want the same thing for other

Cross - Magee

1 Garlock affiliates; right?

2 A. That would certainly be our goal. Yes.

3 Q. And that's something that you want because that
4 removes the shadow of asbestos from the EnPro corporate
5 family; right?

6 A. That's the certainty and finality that I was
7 referred referring to. Yes, sir.

8 Q. That would be good for the stock price, wouldn't
9 it?

10 A. I assume it would be. Yes.

11 Q. Is your compensation in any way tied to the stock
12 price?

13 A. Is my compensation tied the stock price?

14 Q. Yes, sir.

15 A. Not directly. I mean I have some EnPro equity
16 and, obviously, the value of that is tied to the stock
17 price. But my annual compensation is not in any way tied
18 to the stock price.

19 Q. By this question I'm not taking issue with any of
20 that. I just want to get on the record what the party's
21 respective motivations are.

22 A. Sure.

23 Q. Now you're responsible for the asbestos
24 litigation, the asbestos issue, correct?

25 A. Yes, I am. I believe I'm ultimately responsible

Cross - Magee

1 for it. That's correct. There's others of us who are
2 also responsible.

3 Q. And the pre-petition records that we're looking
4 at, the data that we're looking at, that Mr. Grier and I
5 are looking at. 99.7 percent of all claims were resolved
6 outside of trial, weren't they?

7 A. I don't have that calculation but I -- if you've
8 done the math, I'll certainly accept that. That's in the
9 ballpark. Yes.

10 Q. You'll agree with me that very, very --

11 A. It's a very large majority. It's definitely over
12 99 percent. It might be closer -- it might be even
13 higher than that number.

14 Q. In fact, in the 2005 to 2010 timeframe, it was
15 more like 99.9 percent. A tiny, tiny, tiny percentage of
16 cases went to trial. True?

17 A. Well I showed a slide that showed the number of
18 verdicts and the number of total Mesothelioma cases. I
19 didn't do the math.

20 Q. When you settle these cases, sir, acting
21 completely consistently with your duties to your client,
22 you and your colleagues at Garrison, the lawyers at
23 Garrison, in every instance they always tried to pay the
24 minimum amount possible. Right?

25 A. You know that -- obviously, they didn't intend to

Cross - Magee

1 pay more than they needed to pay to resolve the claims,
2 but their purpose was to get the claims resolved. And
3 they paid claims at numbers that were -- obviously, there
4 were settlements that were agreeable to both parties that
5 got those claims settled in a large majority of the
6 cases.

7 Q. So on the one hand there's the defendant wanting
8 to pay as little as possible; on the other hand, you have
9 the plaintiff and he wants as much as possible; right?
10 You would agree with that?

11 A. I think that's probably within reason.

12 Q. Simple economics.

13 A. Certainly Dr. Bates would say that's an economic
14 proposition. Yes.

15 Q. Now Garlock filed for bankruptcy in 2010; right?

16 A. That's correct. June of 2010.

17 Q. You were intimately involved in that decision;
18 right?

19 A. I was a participant in that decision.

20 Q. And you --

21 A. I'm not on the board of Garlock and I'm not on the
22 board of EnPro, but I was certainly involved.

23 Q. And that's something that had been planned for a
24 long time, hadn't it?

25 A. I wouldn't say that it had been planned for a long

Cross - Magee

1 time. I believe in my deposition you may have asked me
2 that, and I told you it was something we considered from
3 time to time. But being planned for -- I would not agree
4 with that characterization "planned for a long time."

5 Q. But you would agree with me that Garlock filed for
6 bankruptcy with the approval of its parent, EnPro.

7 A. Absolutely.

8 Q. And EnPro approved that filing because it believed
9 that that's the best possible result available to Garlock
10 and EnPro to deal with the asbestos issue; correct?

11 A. Yes.

12 Q. And as part of this estimate, consistent with what
13 we just talked about, EnPro wants Judge Hodges to
14 estimate the number of asbestos liabilities, we're just
15 focusing on Mesothelioma now, at the lowest number
16 possible. Right?

17 A. We want the judge to take all the evidence and
18 determine what he believes is a fair resolution, a fair
19 amount for Garlock's actual legal liability for the
20 claims. Yes.

21 Q. And from your perspective that makes perfect
22 sense. But you're not looking after the interest of
23 current claimants, are you? That's Mr. Swett's job.

24 A. That's not my job. No, sir.

25 Q. Right. And you're not looking out for the

Cross - Magee

1 interest of future claimants. That's Mr. Grier's job.

2 A. That is Mr. Grier's job. I believe I testified
3 that we proposed a generous fund for both of those sets
4 of claimants.

5 Q. Now you knew Mr. Grier before the bankruptcy;
6 right?

7 A. I've known Mr. Grier for a long time. Yes.

8 Q. And he's a well-respected lawyer in this
9 community, isn't he, sir?

10 A. Absolutely. One of the best.

11 Q. I would agree. And he had no involvement in
12 asbestos before this case.

13 A. As far as I know he didn't. If he tells me he
14 didn't, I would certainly believe that to be true.

15 Q. In fact, you wanted an FCR that had no prior
16 asbestos experience; correct? You wanted a truly
17 independent FCR?

18 A. Yeah. I would give you the latter; I wouldn't
19 give you the former. It didn't matter to me whether the
20 FCR had experience in asbestos or not. We certainly
21 wanted -- we thought it was right for it to be a truly
22 independent FCR.

23 Q. So you picked Mr. Grier with no prior asbestos
24 experience, no reason for him to be involved in the
25 future in asbestos cases. You want him to act as an

Cross - Magee

1 independent fiduciary representing the interest of future
2 claimants. Right?

3 A. Yes. And I believe then and I believe now that
4 Mr. Grier is a fine choice to be the FCR.

5 Q. And his participation is key to the plan that you
6 have for a 524(g) injunction, because Mr. Grier has to
7 be convinced that the plan is fair and equitable for the
8 future; right?

9 A. I certainly wish that that's the way it worked. I
10 wish Mr. Grier was entitled to a vote. I'm not sure
11 that's true, but certainly --

12 Q. You want to find out?

13 A. -- I certainly hope that we can reach an agreement
14 that Mr. Grier thinks is fair and equitable.

15 Q. I think it's clear from all the testimony we've
16 seen today that Mr. Grier's contingency is the largest
17 creditor group in this case by far.

18 A. There's no question about that.

19 Q. More than 75 percent; right?

20 A. I'm not the person that can tell you that, but I
21 think that's probably true.

22 Q. Now we're here today to talk about the Court's
23 estimation order, and you've read that many times I know.

24 A. I certainly have. I don't know about "many
25 times," but I've certainly read it more than once.

Cross - Magee

1 Q. And Judge Hodges recognizes the two approaches
2 that we've been fighting about; right?

3 A. Right.

4 Q. One approach looks to the past history, the
5 settlements and the verdicts, correct? The real data
6 that we have available to us.

7 A. The real data? The historical data, that's --

8 Q. I'll go with that. One looks to the historical
9 data; right?

10 A. Correct.

11 Q. And the other one is this merits-based analysis
12 that Dr. Bates talked about.

13 A. That's correct.

14 Q. That's the one where Garlock would pay -- every
15 case would go to trial and there would be a share of the
16 votes. Correct?

17 A. Dr. Bates has constructed a model under the
18 assumption that every case that goes to verdict for a
19 determination of the actual legal liability of Garlock in
20 this case. That's correct.

21 Q. And when we look at the settlement information or
22 the exposure information that's available to us from the
23 present claimants that have filed PIQs, you remember
24 Mr. Henshaw's testimony, Dr. Henshaw's testimony, about
25 reviewing all the PIQs and the depositions?

Cross - Magee

1 A. I do. There are several different participants
2 that have reviewed all those. Correct.

3 Q. And he said he reviewed something like 537
4 depositions of not people who have already settled but
5 the people who are in the pool of current claimants who
6 have existing pending claims?

7 A. Actually, Mr. Henshaw did review some of those,
8 and he did review some historical deposition testimony as
9 well.

10 Q. You remember that he said that what he reviewed
11 showed him that those present claimants freely
12 acknowledged exposure to insulation products. Right?

13 A. I don't believe he said anything about "freely."
14 I think he said through digging through that discovery he
15 was able to determine exposure to insulation products.

16 Q. And Dr. Bates had access to the PIQs that Judge
17 Hodges ordered. You remember that?

18 A. That's correct, and the underlying discovery.

19 Q. And those PIQs also showed multiple exposures to
20 non-Garlock asbestos-containing products, didn't they?

21 A. Sure. That was the discovery that was ordered in
22 this case is what has produced that information.
23 Correct.

24 Q. Now, Mr. Cassada was focusing on the 15 cases.
25 Remember those?

Cross - Magee

1 A. I absolutely do. And the 205. Yes.

2 Q. I'm not going to mention any of them by name
3 because we don't want to have to empty the courtroom
4 again. But you would agree with me that that's 15 of
5 thousands and thousands and thousands of settlements;
6 right?

7 A. Mr. Guy, I'd tell you that that's 15 out of 15
8 where we received extensive discovery. As you know, from
9 the beginning of the case we have tried to get extensive
10 discovery about a number of claims. That was the number
11 of claims to which we were allowed that extensive
12 discovery.

13 Q. And Mr. Magee, I'm not here to argue with you
14 about the 15. What I'm trying to help my client
15 understand is, are they really representative of the
16 12,000 claims that are part of the database from the late
17 2000s or are they complete outliers.

18 A. I'd like to know the answer to that too, Mr. Guy.
19 I wish we could get discovery of all those cases and
20 determine that. We even proposed that we do a random
21 sample of them to get that and we were not allowed that
22 discovery.

23 Q. Now you would agree with me that the mere fact
24 that Garlock is sitting as one or two defendants left in
25 the courtroom because all the old dusty companies are now

Cross - Magee

1 in bankruptcy. Putting aside the issue about
2 identification of products, would you agree with me that
3 that mere fact has upward pressure on the amount that
4 Garlock is paying to resolve its cases because it's just
5 one of three instead of being one of 30?

6 A. Well, it depends. If that's the only fact you
7 give me then, yeah, I would agree with that. But if you
8 tell me who's really in the courtroom and who's really in
9 the courtroom is who that claimant or the claimant's
10 representatives or the co-workers acknowledge exposure
11 to, then those people are who's really in the courtroom.

12 If that's -- if there's only one defendant there
13 but the claimant's exposure to the products of 15
14 defendants, then all 15 of those defendants are in the
15 courtroom Mr. Guy. That's how I define who's in the
16 courtroom.

17 Q. Now, when I asked Dr. Bates as to whether you
18 could separate out the upward pressure that results from
19 there being fewer defendants from the issue of product
20 ID, he said, "So I think that answers your question about
21 how much of it was attributable to an increase in the
22 risk that's associated with the other defendants not
23 being in the courtroom, though it's impossible here to
24 really separate that out from the part of it which is
25 attributable to the fact that some of the information is

Cross - Magee

1 withheld."

2 Knowing what you know and having been intimately
3 involved in this case now for three years, would you
4 agree with Dr. Bates that as a crisp, analytical question
5 and so that we can say to the judge that's the number, we
6 know that's the number. That number is responsible from
7 fewer defendants being in the courtroom. That number is
8 responsible from the fact that the product ID comes
9 later. We can't do that, can we?

10 MR. CASSADA: Your Honor, I'm going to object to
11 the question because I don't think it fairly summarizes
12 Dr. Bates' testimony.

13 THE COURT: Well, overruled. You can answer it if
14 you can.

15 THE WITNESS: We can look at what we have.
16 Mr. Guy, we can look at the evidence from the 1990s,
17 what happened in the 1990s when evidence of those
18 exposures were available. Those -- they weren't
19 necessarily all in the courtroom when that evidence of
20 those exposures was available, but the evidence of their
21 exposures was available.

22 We can look at what happened in the 2000s when the
23 trust claims were ordered, like in the Davis case, like
24 in the Dougherty case, like in the Messenger case, and we
25 can see that Garlock got defense verdicts in those cases

Cross - Magee

1 when those -- when those defendants were in the courtroom
2 by virtue of trust funds through which the claimant
3 acknowledged exposure to the products. That's what I've
4 got to base it on. That's the only way I know to answer
5 your question.

6 BY MR. GUY:

7 Q. I want to focus not on cases -- and there's not
8 very many of them -- not on cases where it went to trial
9 and then there was a settlement. I understand the
10 testimony in that. What I want to focus on are the cases
11 which is something like 99.7 percent of them where an
12 allegation was made and the Garrison lawyers engaged,
13 your lawyers in the various jurisdictions engaged, and
14 then the parties reached a settlement. Okay? So that's
15 going to be the focus of my questions, because that
16 represents the huge database that we have. Now, you had
17 to approve the high level settlements; right?

18 A. That's correct.

19 Q. And then there was a process at Garrison where the
20 lower the settlement, the fewer the people had to sign
21 off on it?

22 A. Well, that's correct. Either the attorney level
23 or Mr. Grant, the president level. So there two levels
24 within Garrison. That's correct.

25 Q. And the other thing that you had to do when you

Cross - Magee

1 were GC is you had to approve the 10-Ks that we've seen;
2 right?

3 A. Not only approve them but I was the signatory to
4 those. Yes.

5 Q. In fact, you wrote in many of them, right, or
6 portions?

7 A. I was responsible for portions of them and wrote
8 portions of them. Correct.

9 Q. And you signed them as being true and correct to
10 the best of your knowledge; right?

11 A. Absolutely.

12 Q. And you knew that investors were relying on them;
13 right?

14 A. I knew that was a document investors would read
15 and pay attention to. Correct.

16 Q. I think, as we heard from your direct testimony, a
17 lot of effort was put into preparing those estimates as
18 to the asbestos issue; correct?

19 A. That's correct.

20 Q. Now when you settled cases, you considered the
21 jurisdiction of where the complaint was filed; right?

22 A. Again, that depended, Mr. Guy, on -- I think we
23 went through this maybe in my deposition. When cases
24 presented risks -- when cases presented risks -- you saw
25 the hundred person slide. You know that in the whole

Cross - Magee

1 time, 82 percent, and in the 2,006 to 2010 timeframe 72
2 percent, were resolved for \$25,000 and less. I would
3 tell you in that percentage of claims there was no
4 consideration of jurisdiction. There was consideration
5 of getting those cases resolved for low dollar payments.

6 Certainly in the cases that presented risks that
7 were presented to me for resolution, I would have
8 considered a number of factors including jurisdiction.
9 That was for the part of the formula where you try to
10 determine what the potential loss would be. In other
11 words, you had to -- if Garlock had some risk of loss,
12 you needed to also determine what the potential loss that
13 would be and what it would be a percentage of some damage
14 amount. And so in those instances, jurisdiction would
15 certainly be important.

16 Q. Okay. And I'm not trying to catch you up,
17 Mr. Magee. So maybe so it would facilitate things if we
18 pull up the 2006, 10-K, page 34. That's your signature;
19 right?

20 A. That's my signature. Well, that acknowledges that
21 I had signed the original of the document. Yes, sir.

22 Q It's one those funny things. I've never really
23 understood how that works. We'll get there in a second.
24 I apologize, Your Honor.

25 Now, did you write this language?

Cross - Magee

1 A. I was responsible for this language. I haven't
2 read it all, but I'm assuming if it's pulled right from
3 the language that I was certainly responsible for it. I
4 won't claim complete authorship but, yes, I was
5 responsible for it.

6 Q. We tried to just reproduce it on our opening we
7 used it but we couldn't read it. So we've retyped it in.
8 Now it says right up front, as Mr. Cassada asked you,
9 settlements are made without any admission of liability.

10 A. That's correct.

11 Q. That's pretty standard, isn't it? I mean if
12 you're settling something, neither side is acknowledging
13 anything. They're just saying we're done. We're paying
14 an amount of money. We're not agreeing we're liable but
15 we're moving on.

16 A. That's exactly the point we're trying to make,
17 Mr. Guy. We're not acknowledging liability when we
18 make settlements.

19 Q. Got it. We agree on it. But when you settled
20 cases, you did consider factors that were relevant to
21 trial risk. So, for example, you did consider the
22 jurisdiction; right?

23 A. Again, as I just explained, in cases that
24 presented risk we considered a number of factors
25 including jurisdiction.

Cross - Magee

1 Q. And that makes a difference. Because in some
2 jurisdictions there could be bigger verdicts than others;
3 right?

4 A. No question about it.

5 Q. And the law's favorable to plaintiffs in some
6 jurisdictions and it's unfavorable to plaintiffs in
7 others; right?

8 A. I'm not sure what you mean by "favorable" and
9 "unfavorable," but certainly plaintiffs have had better
10 results in some jurisdictions than others.

11 Q. Such as New York and Illinois and Delaware and
12 Pennsylvania. Right?

13 A. I would say -- well, we could probably bicker over
14 which jurisdictions. The point is that some
15 jurisdictions have higher verdict potentials than other
16 there's, no question about it.

17 Q. When you were settling, you also considered the
18 factor of the nature and extent of the disease, and we're
19 talking about Mesothelioma. But you were considering
20 other diseases, right, when you settled?

21 A. Right. That, obviously, is talking about whether
22 it's Mesothelioma, whether it's lung or other cancer, or
23 whether it's a nonmalignant condition.

24 Q. You needed medical evidence of the disease, didn't
25 you?

Cross - Magee

1 A. If a case was presented as a Mesothelioma case, I
2 believe I testified that we would have to have a
3 diagnosis -- a confirmed diagnosis of Mesothelioma.

4 Q. And the age was important, wasn't it? Because the
5 younger the plaintiff, the potential of greater trial
6 risk; right?

7 A. Well, no. Actually, I would say that differently
8 Mr. Guy. The younger the plaintiff, the higher
9 potential damages. The trial -- I don't believe that
10 would -- I don't believe the age of the claimant would go
11 one way or the other to the trial risk, but the age of
12 the claimant would certainly factor into the amount of
13 damages that a claimant would get if he were successful
14 at trial.

15 Q. Okay. That's fair. Let's work with damages.
16 The occupation could impact damages?

17 A. Certainly.

18 Q. Because someone who's a doctor and earning a lot
19 of money, you need to compensate them for that; right?

20 A. Well, you know, it's economic damages and what
21 their loss -- lost payment or lost income would be.
22 Right.

23 Q. Now here's an important one: The presence or
24 absence of other possible causes. That's other
25 companies' products, isn't it?

Cross - Magee

1 A. That would be what that would be referring to.

2 Yes.

3 Q. And alternative sources of payment. That would be
4 other companies and trusts; correct?

5 A. That's correct.

6 Q. So, this is 2006. You're clearly considering
7 these factors when you're settling cases. Obviously, you
8 considered your legal defenses. Right?

9 A. That was first and foremost. Yes.

10 Q. And that's the low-dose Chrysotile defense that we
11 heard about for a few days; correct?

12 A. Well that's certainly one of the defenses.
13 Another defense would be exposure to the product. But,
14 yes, that's a defense.

15 Q. Right. Now, this is also key. The next
16 paragraph: Before any payment on --

17 A. You left off the last line, whether the actions is
18 an individual or part of a group. Absolutely important
19 because that's how you save costs. That's how you avoid
20 costs: You settle them as part of a group.

21 Q. So if a plaintiff's firm comes to you and says
22 I've got 20 cases to resolve, that's better than saying
23 they only have one. Right?

24 A. Certainly, if you can avoid the cost in the 20
25 cases then that makes that attractive, more attractive

Cross - Magee

1 than just avoiding the cost in one case.

2 Q. Now, you would never pay anybody under settled
3 claims unless you have a medical report acceptable to
4 Garlock.

5 A. For a disease claim that's correct.

6 Q. That would certainly be true because you can't
7 fake Mesothelioma. You either have it or you don't;
8 right?

9 A. I'm sorry?

10 Q. You can't fake Mesothelioma. You either have it
11 or you don't.

12 A. There's been a few cases of disputed Mesothelioma
13 but, in general, Mesothelioma is a disease that has a
14 clear diagnosis.

15 Q. And I think everybody's in agreement it's a
16 horrible disease and it's got a very short period of time
17 before you are diagnosed and you die. Right?

18 A. That's unfortunately true. There have been --
19 there have been advances there that have prolonged the
20 lives of some claimants, but it's a horrible disease.

21 Q. Now in addition, you needed sworn testimony other
22 evidence that the claimant worked with or around Garlock
23 products; right?

24 A. Absolutely.

25 Q. Why did you need that?

Cross - Magee

1 A. Well we weren't going to pay a claim if there was
2 not exposure to Garlock products. That's why, again,
3 those two first two requirements you've got to
4 demonstrate. You've got the disease and you've got to
5 demonstrate exposure to Garlock products.

6 Q. Mr. Magee, is that a fair representation of the
7 factors that you considered from the 10-K?

8 A. There's a number of factors and, I think, that
9 overall probably is a fair overall statement. It doesn't
10 weight the factors or anything else and it's one part of
11 the -- it's one part of, as I said, significant
12 disclosures that's throughout the disease.

13 I didn't mean to put an arrow on there.

14 Q. That's okay.

15 I mean this with the greatest respect. That's a
16 merit analysis that you went through, isn't it, sir?
17 You're looking at all those factors. You're weighing
18 them and you're making a decision as to what is the right
19 amount to pay. And I understand you're not admitting
20 liability, but you're weighing the amount, right amount
21 of money to pay, at that point where the two places in
22 defendants are in agreement to resolve the claim. Right?

23 A. There's certainly some merits factors included
24 here. But Mr. Guy, I think I've testified pretty
25 clearly and repeatedly that where you are paying an

Cross - Magee

1 amount in settlement that's far less than the amount that
2 it would pay -- that it would cost you to defend the case
3 and win the case, that the costs you're avoiding are also
4 a substantial factor in that analysis. And that is clear
5 in -- in this passage that you've read, that's in there.
6 And it's clear from an overall reading of the disclosure
7 about asbestos in our quarterly and annual reports.

8 Q. Mr. Magee, I'm not going to quibble with you as
9 to whether a defendant takes into account what it's going
10 to cost to litigate a case because I think that's obvious
11 and a given. The debtors are saying to the Court that
12 it's the controlling factor. And what I find interesting
13 is there isn't a mention of defense costs in there at
14 all. When it says, "settlement amounts vary upon." Now,
15 Dr. Bates said the settlement amount is determined by the
16 defense costs. But in 2006, before anybody was thinking
17 about what to say in advocacy, it doesn't say anything
18 about defense costs there. Am I right?

19 A. That's absolutely a mischaracterization of the
20 disclosures in total. There are at least two, three
21 other places in this document where there's a clear
22 reference to the costs that could be avoided in
23 settlements. There's a settlements paragraph that talks
24 about there. In the risks paragraph earlier in the
25 document, it talks about that. There are several places

Cross - Magee

1 where that is a factor that's enumerated.

2 Q. Mr. Magee, I said I'm not disagreeing with you
3 that it's obviously a factor.

4 A. I thought you were just saying that it's not
5 mentioned.

6 Q. Well it's not mentioned in that, "settlement
7 amounts vary upon the number of factors." If it's going
8 to be the controlling issue, wouldn't it be front and
9 center?

10 A. That's talking about the reasons that settlement
11 amounts vary.

12 Q. Got it.

13 A. Again, if you'd like me to -- if you'd like me to
14 take the document and show you the places in the
15 disclosures where it talks about the cost of the asbestos
16 litigation and how that's an important factor, I can show
17 you those places.

18 Q. Maybe we'll get to it, Mr. Magee, but I'm not
19 precluding you from doing that. Maybe on redirect you
20 can do that. I want us to move on if we can.

21 Now do you agree with me that once a plaintiff has
22 alleged exposure to a Garlock product, that makes it
23 almost impossible and very difficult for Garlock to get a
24 case dismissed or kicked out on summary judgment;
25 correct?

Cross - Magee

1 A. I would disagree with that. It's certainly more
2 difficult.

3 Q. More difficult?

4 A. Certainly more difficult. Yes.

5 Q. And I think one of the things you had said earlier
6 was, once someone alleges exposure then we have to deal
7 with that case. Right?

8 A. Certainly. And again, you remember how we deal
9 with a large majority of the cases: With small payments.
10 They were \$25,000 or less.

11 Q. Now while we're pulling up the transcript.
12 Garlock had lots of lawyers, didn't it, around the
13 country?

14 A. Yes.

15 Q. Very good lawyers?

16 A. Yes, I think so.

17 Q. And Garlock spent a lot of money on them; right?

18 A. I actually think Garlock did very well on its
19 legal fees over time but, yes, it spent a lot of money
20 and had very good lawyers.

21 Q. I mean it would with very difficult for Garlock to
22 get out of a case on a Motion for Summary Judgment.
23 That's consistent with what you just said?

24 A. Yeah. You see at the bottom exactly what we're
25 talking about: "Basic identification of Garlock product

Cross - Magee

1 at those sites could have been sufficient to require
2 Garlock to spend significant dollars on the case."

3 Q. We understand. Now I want to talk about the legal
4 defenses and what Garlock knew when it was settling cases
5 in the 2000s. We heard a lot from industrial hygienists
6 and doctors in the science portion of the case. Remember
7 that, sir?

8 A. Sure.

9 Q. I think you were present for most of that, if not
10 for all?

11 A. I was.

12 Q. We heard from Drs. Garabrant, Sporn, Weill, Brody;
13 then we heard from Wasson, Liukonen, Boelter, Henshaw,
14 Longo, Shoemaker, Templin. Garlock was aware of the
15 views of these experts on its side of the case when it
16 was settling cases; right?

17 A. Absolutely. There's been developments over time
18 that I think they testified to. But whatever time period
19 we were dealing with, Garlock was certainly aware of what
20 its experts would be testifying to and the state of the
21 science.

22 Q. And once a plaintiff has alleged exposure and it's
23 difficult to get the case kicked out on Summary Judgment,
24 clearly those legal defenses are important for you in
25 evaluating whether to settle the case. Correct?

Cross - Magee

1 A. Yes. They always have been. That's correct.

2 Q. And you heard Dr. Weill. I think he said that
3 there's a debate in academic circles about whether low-
4 dose Chrysotile can cause Mesothelioma. Do you remember
5 that?

6 A. I believe that's a mischaracterization. I think
7 he said there's a we debate about whether Chrysotile
8 exposure could cause disease. I do not believe he said
9 there is a debate about whether low-dose Chrysotile can
10 cause disease.

11 Q. All right. Let's take Dr. Weill out of this. All
12 the testimony that you heard, that we heard and we were
13 hearing, it really for the first time in that format. Do
14 you believe that there's no debate in academic circles
15 about whether low-dose Chrysotile asbestos causes
16 Mesothelioma? I'm not saying you agree with the
17 plaintiffs. I'm just saying do you agree there's a
18 debate in academic circles about that issue?

19 A. I believe that there is no legitimate debate in
20 legitimate scientific circles about low-dose Chrysotile
21 exposures.

22 Q. So Judge Fitzgerald is wrong?

23 A. If she said that that's not -- if she disagrees
24 with that, I believe she's wrong. I think you've got to
25 make the distinction between the regulatory

Cross - Magee

1 pronouncements about Chrysotile and causation-based risk
2 assessments. I don't think there's any legitimate
3 question about whether low-dose Chrysotile has been
4 proven to be a cause of Mesothelioma. It absolutely has
5 not been. And because regulatory agencies happen to have
6 said there's -- that you can't rule out, that that's a
7 far different thing than evidence of causation. I don't
8 believe there's any serious scientific debate about
9 whether it's been proved to be a cause of Mesothelioma.

10 Q. Mr. Magee, I'm not going to press you on that
11 because the Court obviously heard the testimony and we're
12 not trying to make that determination here.

13 A. You asked me the question, Mr. Guy.

14 Q. I understand. I just -- I'm not going to convince
15 you, so I'm not going to try.

16 Now, when these cases go to the jury, even in the
17 1990s, when it was the good days, Garlock still did lose
18 cases in the 1990s didn't it?

19 A. Very few as we've shown. Yes.

20 Q. But even in the world when we had insulation
21 defendants in the courtroom, Garlock still lost cases.
22 Right?

23 A. We could examine those specific cases. Whether
24 there was insulation companies in -- just because
25 insulation companies were being sued during that time

Cross - Magee

1 doesn't necessarily mean they were in the courtroom.
2 There was still targeting going on from case to case to
3 try to get defendants to pay settlements. Garlock was
4 obviously successful in paying very low settlements.
5 Sometimes a plaintiff's firm would try to increase the
6 amount of those low settlements and would take Garlock to
7 trial, and on very rare occasions the claimants were
8 successful.

9 Q. Mr. Magee, we can walk you through the various
10 testimony of the various witnesses that have been
11 presented by the debtors, but I think it was clear that
12 each of them were saying that this issue of non- --
13 insulation product nondisclosure first occurred in the
14 2000s. Right?

15 A. What we were talking about is the fact that these
16 insulation companies filed for bankruptcy. And not only
17 did the companies leave the system but also the evidence
18 about exposure to their products left the system.

19 Q. That's a phenomenon that first occurred in the
20 2000s.

21 A. It occurred first in the 2000s with respect to
22 those defendants. That's correct.

23 Q. So in the 1990s, at least, you had information
24 about insulation companies when those cases went to
25 trial. Right?

Cross - Magee

1 A. Those companies would have been sued in the
2 complaint. And, yes, we would have been able to get --
3 that's the complaint, Mr. Guy. Because they were sued,
4 because they were identified, we would be able to get
5 that information. Whereas, we can't when they filed for
6 bankruptcy and that information is no longer available.
7 That didn't necessarily mean they would still be around
8 at trial, but certainly that information was available.
9 You could still have a claimant not acknowledging the
10 exposure to the products and pointing the finger at
11 Garlock.

12 Q. Mr. Magee, I want to now turn to what Garlock
13 agreed to in its settlements that represent the majority
14 of the data that we have to look at. And I know that you
15 weren't involved in every settlement by any means, but
16 you were certainly involved in reviewing some of the big
17 ticket settlements. Correct?

18 A. Absolutely.

19 Q. You would not only sign off on the amount but on
20 occasion you would actually review the settlement
21 agreements.

22 A. In a few circumstances I did. Yes.

23 Q. Now, you agree with me that in those settlements
24 and the language of the settlements, they often required
25 exposure evidence consistent with the 10-K statement?

Cross - Magee

1 A. Evidence -- they all required evidence of exposure
2 to Garlock's products. Yes.

3 Q. When you were entering into these settlements in
4 the 2000s, you understood that plaintiffs would likely
5 have claims against insulators that were bankrupt; right?

6 A. Yes.

7 Q. And that continued right up until 2010 when
8 Garlock filed for bankruptcy.

9 A. Yes.

10 Q. Because of what I had said earlier on Mr. Cassada
11 referenced, which is pipefitters work around insulation
12 so it makes sense that they're exposed to insulation.

13 A. Yes. I think -- I understood your question to be
14 to the manufacturers of insulation products. You may
15 have said insulators. But, yes. Yes, we understood that
16 they should be entitled to claims against insulation
17 product manufacturers. That's correct.

18 Q. It would be logical that they would.

19 A. That's the frustration here, Mr. Guy. Yes, it's
20 logical that they should have and that they should have
21 acknowledged that exposure in that claim.

22 Q. And we've seen the testimony from Mr. Henshaw as
23 to what he reviewed about what they said, and I'm sure
24 Mr. Swett's going to go through in detail about, you
25 know, these various cases that have been highlighted.

Cross - Magee

1 But you do agree with me that in most instances the
2 plaintiffs acknowledged exposure to insulation -- put
3 aside identification of product, but they acknowledged
4 exposure to insulation.

5 A. I would agree with you in most cases overall,
6 particularly cases that were resolved at low values. I
7 would disagree with you with respect to cases that were
8 the driver cases, the cases like Treggett, cases like
9 Phillips, cases like Charles White, where the lawyer
10 would actually testify to the jury that that exposure
11 wasn't there, where the claim was targeted and expressly
12 made to look like there was no other exposure there, and
13 where those cases were targeted toward Garlock to try to
14 raise the settlement amounts that Garlock was willing to
15 pay to resolve not only that case but other cases that
16 that firm would have against Garlock. But I would agree
17 with you in the majority of cases that that's not what
18 was going on.

19 Q. Right. And I know that the debtors were extremely
20 frustrated with those cases and I get that, but I want to
21 focus on the vast majority of the cases in the vast
22 majority of the instances when these individuals, many of
23 whom had been in the armed services, were questioned.
24 They said yeah, I worked around asbestos. It was dusty.
25 It was a snow cloud. They said that, didn't they?

Cross - Magee

1 A. I wouldn't say that the vast majority did. Some
2 did. They used to say it all the time in the '90s. They
3 said it less in the 2000s. Even when they said they
4 worked around insulation, they minimized it. And
5 certainly by the time of trial the testimony was that it
6 didn't exist or they didn't recall it ever being in their
7 breathing zone, or it was contained in safe boots, or
8 that they worked in a shop and the equipment was brought
9 to them with the asbestos insulation cleaned off or
10 whatever -- excuse me whatever other story would help
11 them target Garlock and minimize the exposure to the
12 asbestos insulation.

13 Was that a minority of the cases? Yes. But it
14 was a very important minority of the cases being used to
15 drive up Garlock's settlement costs and settlement
16 amounts. I'm sorry. Let me add I'd like to know how
17 many cases it really was. And I would welcome the
18 opportunity for us to get discovery about how many cases
19 it really was. Right now we're 15 for 15.

20 Q. Mr. Magee, so when you were settling cases -- and
21 Garrison litigation was the arm that administered all
22 these cases for Garlock; correct?

23 A. That's correct.

24 Q. And you had professionals there, lawyers, and all
25 they did was resolve cases, asbestos cases.

Cross - Magee

1 A. Pretty much. That was the major part of their
2 role. Yes, that's correct.

3 Q. Now at the time that they were settling cases in
4 the 2000s, they were fully aware that individuals would
5 likely have claims against bankrupt insulation companies;
6 correct?

7 A. Absolutely. That's the frustration here. Yes.

8 Q. Okay. When you entered into those settlements,
9 given that this was so important an issue -- and it was
10 an important issue for you; right?

11 A. Yes.

12 Q. We can stipulate to that?

13 A. Yes.

14 Q. Now when you entered into these settlements, I've
15 looked at some of them. I haven't looked at all of them,
16 there's thousands of them, but there's not a mention in
17 any of them -- it doesn't say in a single one that I've
18 seen: You represent to me you weren't exposed to these
19 products; or I've asked you about these products and you
20 don't remember. And therefore, if it turn turns out that
21 you submit a claim, then I want a reduction in my amount
22 of settlement. If it was so important to Garlock, why
23 isn't it in the settlement agreements?

24 A. If that were put in the settlement agreements, I
25 suspect a settlement wouldn't have been reached.

Cross - Magee

1 Q. Do you know -- who's Mr. Tim O'Reilly?

2 A. Mr. O'Reilly was with Garrison and Goodrich and
3 then with EnPro for a short time after the spin-off. He
4 was -- actually, he was in Charlotte. At one point he
5 was president of Garrison, and then I believe he was a
6 vice president of Coltec when he moved to Charlotte.

7 Q. While we're pulling up his testimony. We talked
8 about the debtor's knowledge of the legal defenses. The
9 debtors also had very good lawyers who were very familiar
10 with the law in the various jurisdictions, correct? The
11 disclosure requirements, the CMOs and the like?

12 A. We had lawyers in every jurisdiction and we would
13 have expected them to be aware of the law in those
14 jurisdictions. Yes.

15 Q. I think Mr. Brickman said the jurisdiction would
16 require the disclosure of claims; correct?

17 A. Some of them did.

18 Q. You were certainly familiar with the law on the
19 causation in the various jurisdictions; correct?

20 A. Me personally or Garlock through its lawyers?

21 Q. Garlock through its lawyers.

22 A. Yes. Yes.

23 Q. We've heard a lot about the Moeller case, and
24 that's the bucket in the ocean case.

25 A. It is. Chief Judge -- Sixth Circuit Chief Judge

Cross - Magee

1 Batchelder's opinion. Yes.

2 Q. There's a Judge Guy on that opinion too. Now that
3 decision isn't brand new law in the Sixth Circuit, is it?

4 A. That decision isn't brand new law in most of the
5 -- most of the jurisdictions, Mr. Guy.

6 Q. That's not a brand new development that suddenly
7 happened after the bankruptcy that has a huge impact on
8 settlement cases, is it?

9 A. That's absolutely a point we're making here,
10 Mr. Guy. That's the law, and that's why Garlock's
11 responsibility shouldn't be anywhere close to what the
12 settlement history you point to as being its liability
13 is.

14 Q. Now Mr. Brickman said -- when he was focusing on
15 the 15 cases, he said that it's basically fraud. Right?

16 A. I'm sorry?

17 Q. I think Mr. Brickman characterized what's going
18 on in the 15 cases and the video clips that you filed as
19 being fraud.

20 A. I don't know whether Mr. Brickman characterized
21 it that way or not. I think there's some evidence of
22 fraud in some of the cases. I'm reluctant to allege
23 fraud unless -- I'm certain there's certainly omissions
24 in all 15 of those cases. What the motivation for the
25 omissions was? Whether it was fraud or somebody

Cross - Magee

1 remembering incorrectly or what the motivation was. I'm
2 not passing judgment here, in this case, and I don't
3 think it's necessary for this case, there is another
4 evidence avenue for procedures and for legal processes
5 where we believe that to be the case. And if the
6 evidence demonstrates that, then there will be a
7 recovery. But that's a whole different -- that's a whole
8 different thing than what we're about here.

9 Q. What I'm struggling with, Mr. Magee, is this has
10 been going on for at least from 2000 to 2010. The
11 debtors know about it. It's not in any of the settlement
12 agreements. I understand from earlier testimony that
13 this is an issue that's never been ruled on definitively
14 by any court; right? No lawyer has been sanctioned for
15 it; right?

16 A. You've lost me.

17 Q. You're not -- are you aware of any lawyer who's
18 been sanctioned in any way for the "fraud request" issue
19 that Professor Brickman is talking about?

20 A. There have been lawyers sanctioned for fraud in
21 asbestos litigation for various reasons. But with the
22 respect to what we're talking about here, we're talking
23 about something that's in secret and we're just being
24 able to peek behind the curtain for the first time.

25 Q. Well the challenge we have is you're asking

Cross - Magee

1 Mr. Grier to agree to a number that's many, many
2 multiples less than what the debtor estimated its
3 liabilities to be by reference to these instances; right?
4 So we're trying to figure out whether it is really is a
5 wholesale problem or whether it's a small problem.

6 Now, I want to ask you about the settlements. In
7 the settlements you never resolved anybody else's
8 liability, right, no other company's liability?

9 A. In the -- no. Garlock's settlements resolved
10 Garlock's liability.

11 Q. Okay. And you had the exposure evidence in the
12 settlements; right?

13 A. The exposure to Garlock's product evidence. Yes.

14 Q. And there were never any representations in the
15 settlement agreements about the trust issue and the ID of
16 other companies; correct?

17 A. You know that's an interesting proposition,
18 Mr. Guy. No, that language wasn't in the settlements.
19 Obviously there was discovery in the underlying cases
20 where that -- where questions about that were asked and
21 where answers were provided, and so Garlock already had
22 the answers to those questions in the discovery in the
23 case. I guess you're suggesting it should say, what you
24 told us during the case you really meant and you're
25 telling us again and it's true. I guess that's something

Cross - Magee

1 maybe they should have considered. I suspect that it
2 would have resulted in those settlement agreements not
3 being reached.

4 Q. Mr. Magee, what I'm trying to understand is
5 there's clearly cases where when a plaintiff is being
6 deposed under oath and he's asked, what products do you
7 remember? There were clearly cases where the witness
8 says look, I know I worked around insulation -- we saw
9 that earlier in the case. They acknowledged it -- but I
10 can't tell you whose it was because it was all painted
11 white. We saw the pipes, too. You would agree that
12 that's not an improbable amount -- improbable testimony.

13 A. All I know is that was the testimony in the 2000s.
14 In this 1999s it was -- in the 1990s it was testimony
15 that that was Unibestos insulation; that it was Kaylo
16 insulation. The interrogatories signed by the lawyers
17 would attest to the fact it was Unibestos insulation,
18 that it was Kaylo insulation. And now all of a sudden
19 when they're asked the questions about those specific
20 brands they can't remember. And I'll acknowledge that in
21 a lot of cases the worker might not have remembered. But
22 certainly the lawyer, in answering those interrogatories,
23 would have had that information and would have been able
24 to provide that information and, in fact, ultimately did
25 provide that information when the trust claim was made.

Cross - Magee

1 Q. So that's the crux of it, right? It's not that
2 the individual plaintiff was misrepresenting what he
3 remembered. It's that the lawyers had knowledge as to
4 what company's products were at that site and they didn't
5 present that to the debtors in a way that they could use
6 it at trial in an affidavit or something similar. Is
7 that the issue?

8 A. The issue, Mr. Guy, is that in the '90s the
9 information was readily available. After the
10 bankruptcies, it was no longer readily available.
11 Whether that was because the lawyers knew it and in the
12 '90s would refresh the memory of their clients and stop
13 doing that in the 2000s; whether the claimants in the
14 '90s had better memories than claimants in the 2000s, I
15 can't tell you sitting here what the motivations were.

16 We knew in some cases when a claimant had already
17 signed an affidavit that was put in a lawyer's drawer.
18 We know this in those cases that the claimant was saying
19 one thing in that affidavit and then saying something
20 different in the Garlock case. But we don't have a lot
21 of evidence of that because we don't have a lot of
22 evidence.

23 Q. Mr. Magee, I understand we have the affidavit
24 cases. I understand the trial issue. I understand the
25 evidence that the Court has seen on the 15. I'm really

Cross - Magee

1 focusing on the others. Let's play the testimony of
2 Mr. O'Reilly.

3 Can you tell the Court what role Mr. O'Reilly had
4 at Garlock and at EnPro? We don't have him. He was put
5 on the witness list, Your Honor, but he's obviously not
6 here.

7 A. From sometime -- and I can't remember when he --
8 before my time, he was actually running the Garrison
9 operation even from the time it was the asbestos
10 litigation -- I can't even remember the name of it -- of
11 Coltec back in the '90s. He ran that operation -- he was
12 president of Garrison before Mr. Grant. At one point
13 Mr. Grant reported to him. So he actually ran Garrison
14 at one point. He was with us -- at the time of the spin
15 he came on board and stayed with us until he retired, I
16 believe, early in 2003.

17 Q. Now I asked him this question that I was asking
18 you. Why didn't they put it in the settlement
19 agreements? If this is so critically important, if this
20 is such a huge driver, if we're overpaying all these
21 settlements and we know it; if it's got everything to do
22 with other people's liability and not because we're in
23 trial with two or three other people and there's lots of
24 bankrupt companies where the percentage of recovery is
25 going to be a lot lower, why didn't you put it in the

Cross - Magee

1 settlement agreements? And said, maybe we weren't smart
2 enough to think of it. I don't know. Is there a better
3 answer to that?

4 A. I believe there is. My answer would be because
5 the settlements wouldn't be reached if you required that.

6 Q. They wouldn't agree?

7 A. They wouldn't agree.

8 Q. So you paid knowing that they wouldn't agree to
9 disclose ID that the lawyers on the other side had their
10 own efforts and due diligence would find out.

11 A. We know now that's what was happening and it was
12 happening more pervasively than what I would have guessed
13 it was happening. But Mr. Guy, remember they were still
14 being -- these settlements were still being reached at
15 the settlement amounts far below what it would have cost
16 Garlock to defend and win the case.

17 Q. Mr. Magee, I want to turn quickly to the various
18 estimates that you prepared. And you've talked about
19 those a lot already, so hopefully we can expedite this.
20 You did prepare estimates of asbestos liability; correct?

21 A. Yes. Mr. Grant and I prepared two, in fact, for
22 our financial -- that we relied on in our financial
23 statements before Dr. Bates began doing that.

24 Q. And you did your own internal ones. You also
25 reviewed Dr. Bates' estimates; correct?

Cross - Magee

1 A. I'm sorry. Could you ask me that again?

2 Q. You also reviewed Dr. Bates' estimates?

3 A. Absolutely.

4 Q. And all of that made its way in some way or form
5 on occasion starting in 2004 in the various securities
6 filings; right?

7 A. Certainly -- yes. Sure.

8 Q. And some of them internally you actually signed
9 off on, right? Independent of what was going in the
10 10-Ks, internally you prepared estimates that you signed;
11 right?

12 A. That was what I was referring to, the two that
13 Mr. Grant and I did prior to the time that we -- that
14 I'm not sure exactly relative to when Dr. Bates was
15 retained but until Dr. Bates was prepared to begin giving
16 his estimate.

17 Q. And these various estimates, going over an
18 extended period of time, were all estimating what it
19 would cost the debtors to resolve present and future
20 asbestos claims.

21 A. That's correct.

22 Q. Now when you prepared these estimates you looked
23 at past trends; right?

24 A. Yes.

25 Q. When I say "trends," trends in the asbestos

Cross - Magee

1 litigation --

2 A. We looked at a lot of things, including past --
3 what had happened in the past. Correct.

4 Q. And you also looked at publicly available
5 epidemiological data.

6 A. Yes. When the -- the ones that I did, those rough
7 ones that I did, I was simply using the same -- before
8 Dr. Bates was on board, I was simply using the same data
9 that the CBO had provided in connection with the Fair Act
10 consideration. That's where I had gotten that because
11 that was publicly available.

12 Q. And you also looked at what the trusts were
13 paying; right?

14 A. Not when I did those. I didn't know what the
15 trusts were paying. That became something we looked at
16 over time but not in 2004.

17 Q. So when did it become an issue that you were
18 looking at what trusts were paying?

19 A. After we retained Dr. Bates and he was on board,
20 he educated us me, in particular, about how much -- just
21 how much money was going to be -- was starting to be paid
22 and was going to be available from the trusts. Until
23 then, I had no idea that it was going to be more than \$30
24 billion dollars.

25 Q. When you included within the estimates, you were

Cross - Magee

1 recognizing that there would be trust money available to
2 pay claims and therefore the estimate would be lower?
3 That money being available.

4 A. Again, it depends what time period you're talking
5 about Mr. Guy. Certainly, once Dr. Bates was on board
6 and was -- he was doing estimates, that was part of his
7 analysis. Before then? That was not something that --
8 in our rough estimate and analysis that Mr. Grant and I
9 did, that was not a consideration. We didn't have that
10 information.

11 Q. Okay. So let's -- help me with this. Let's pull
12 up the 2006, 10-K, page 37. So there's a description of
13 what you considered when you were preparing your
14 estimate.

15 A. At that time period. That's 2006. That's
16 correct.

17 Q. That's fair. So going forward from 2006 you
18 definitely considered the 524(g) trust in your estimate.

19 A. Absolutely. Really from the time that we retained
20 Dr. Bates. So I would say it probably was the first part
21 of the estimate for the year end 2004. But certainly by
22 this point it was considered. And just to be clear on
23 that. I think Dr. Bates testified, Mr. Guy, that he had
24 a range. And the amount that that would make a
25 difference was less significant at the upper end of his

Cross - Magee

1 range and more significant at the lower end of his range.

2 Q. Can you read that, sir?

3 A. I can.

4 Q. And that's what you were just talking about. As a
5 result, the low end of the Bates White range still
6 provides a reasonable lower value of possible outcomes.
7 Bates White and management concluded that our internal
8 estimate. That's Garlock and EnPro's internal estimate;
9 right?

10 A. It's an estimate that in conjunction with
11 Mr. Grant that I prepared. That's correct.

12 Q. Correct. For the next ten years represents the
13 most likely point within the range. Accordingly, we have
14 adjusted the recorded liability from the low end estimate
15 to our point estimate. Right? And then --

16 A. That's correct. That's not what I was talking
17 about just a little bit ago, but that is correct.

18 Q. And then if we go to the third paragraph. We
19 currently estimate the liability for the indemnity costs
20 of resolving asbestos claims will be \$561 million. Do
21 you see that sir?

22 A. I do.

23 Q. Now that took into account what you knew about all
24 the trusts and the money in the trusts; right?

25 A. Well, again, we got to work our way to there if

Cross - Magee

1 you want me to answer that question. Dr. Bates' range,
2 which was a -- was a bottom up, firm by firm,
3 jurisdiction by jurisdiction analysis of what he
4 anticipated the future expenditures would look like.
5 What Mr. Grant and I did was far different. We took our
6 budget for the next year and did a top down analysis of
7 what we thought we could do in negotiations over time
8 with the claimants' representatives negotiating claims to
9 get a year by year reduction in what we were getting that
10 year.

11 And to do that top down analysis, we factored in
12 what the incidence models would give us, how much our
13 claims are going to go down because the disease incidence
14 is going down; and how much do we think we can achieve
15 that we can tell our the rest of our senior management
16 group we will be responsible for the targets set forth in
17 this estimate? Ours was a top down analysis. Dr. Bates'
18 was a bottoms up analysis.

19 We would then look at ours and say, does it jive?
20 Does what we say we're going to set for our targets for
21 those years, does Dr. Bates believe that those numbers
22 are within the reasonably likely range for each one of
23 the years in those ten years? And if it did, then that
24 was the number we would select for that year and then we
25 would total them up and that would be the number within

Cross - Magee

1 Dr. Bates' range that we selected as the most likely
2 result for expenditures to resolve claims in the tort
3 system the way we were resolving the claims.

4 Q. Now, lest anybody accuse me of not giving the
5 Court a full picture. That's not net present value.

6 A. No. That was the total amount for the ten year --
7 for the following ten year period.

8 Q. That's obviously not just Mesothelioma claims.

9 A. That's right.

10 Q. That's why I was desperately trying to get an
11 answer from you on the multipliers.

12 A. We certainly could tell you from Dr. Bates'
13 analysis, I believe, how much what percentage of the
14 future estimated claims were Mesothelioma claims. I
15 don't think that's what we thought you were asking. We
16 can -- certainly, the historical resolution costs can be
17 broken down by disease. It's the defense costs, the
18 costs paid to our defense lawyers, that I'm not sure can
19 be broken down by disease.

20 Q. And this doesn't include defense cost?

21 A. It does not include -- well it doesn't include the
22 defense costs that we were paying to our outside lawyers.
23 My view of it is it included a significant amount of
24 defense costs that we were able to avoid by entering into
25 these settlements.

Cross - Magee

1 Q. Now let's pull up one of your internal estimates.
2 Now that's what you were just talking about, right? This
3 is your internal estimate that you did?

4 A. Right. There would be two of these for the two
5 quarters after we would agree with the accountants that
6 we would begin estimating a financial statement liability
7 to predict the future expenditures for asbestos claims.
8 We did that -- Mr. Grant and I did that together for two
9 quarters prior to the time that Dr. -- that Dr. Bates
10 was prepared to provide that estimate.

11 Q. That's your signature there; right?

12 A. Absolutely.

13 Q. And you did this with Mr. Grant?

14 A. Yes.

15 Q. And there were various scenarios that you used;
16 correct?

17 A. That's correct. I believe there were nine.

18 Q. Now I know that there's a low value scenario and
19 there's a high value you scenario. But just so that we
20 have the range, I want to look at the high value, high
21 filing scenario.

22 A. That doesn't surprise me.

23 Q. We can go to the low one too. Now this was just
24 for five years; right?

25 A. Well I think we talked about that at length in my

Cross - Magee

1 deposition. Mr. Guy, it was for -- it was claims that
2 we estimated would be made against Garlock -- it was for
3 the current claims and the claims we estimated would be
4 made against Garlock over the next five years, not for
5 payments that wouldn't be made over the five years. In
6 other words, a claim lodged in the fifth year obviously
7 would not be resolved in the fifth year. It might be
8 Resolved in the seventh year or the eighth year. So this
9 was simply an estimate of the number of claims that would
10 be -- that we could -- that we tried to estimate that
11 could be made against Garlock in that time period.

12 Q. And in doing that, you looked at the historical
13 claims information; right?

14 A. We did but -- we did for numbers of claims.
15 Mr. Grant and I just estimated what we thought
16 resolutions could be for the most part. Again, this was
17 at the time period where more than -- still more than 50
18 percent of Garlock's money was being spent to resolve
19 nonmalignant claims. A significant portion of that, way
20 more than half of that -- I believe at least half of that
21 would have been for nonmalignant claims. But it's in the
22 document, so we could look at it to see what it was.

23 Q. All right. Moving quickly to -- you did a more
24 recent estimate; correct? That was the subject of some
25 litigation as to whether it was --

Cross - Magee

1 A. Well, again, this is -- it's something very
2 different from what Mr. Grant and I were doing there.
3 This is -- this was the top down. What Mr. Grant and I
4 were doing there was a bottom up analysis, just like what
5 -- well not just like, because it was much cruder, but
6 the same kind of thing that Dr. Bates did much more
7 professionally. This was something different. This was
8 our top down analysis that I was talking about where we
9 set goals. We had a budget for the year ahead and we set
10 goals based on that budget for the future years, and
11 that's -- this was the product of that. Yes.

12 Q. When did you prepare this, sir? This is ACC-158?

13 A. I'd have to see -- if it's got a date on it, I
14 think that would be helpful.

15 Q. I think the first year is 2010. Maybe 2009. I'm
16 not hiding the date from you, sir.

17 A. No, I know you're not. I've got to look at it.
18 Yes. This would have been done sometime in 2009.

19 Q. This one is interesting, right, because the
20 financial statements go out ten years? The internal
21 estimate that you signed off on went out five years, but
22 this one went out to 2053.

23 A. Actually, the one you've got pulled up goes out
24 for ten years.

25 Q. I want to -- there's a whole series of them. It's

Cross - Magee

1 not very easy to show them, but at the back of the
2 document it goes up to 2053 I believe. We can just pull
3 up the separate pages. This is the -- it's the
4 GST-0122616. It's two pages.

5 MR. CASSADA: Could you give me that number again,
6 John?

7 MR. GUY: Yes. 0122616.

8 MR. CASSADA: Thank you.

9 BY MR. GUY:

10 Q. Do you see that, sir?

11 A. I do.

12 Q. Do you remember doing that?

13 A. I do.

14 Q. This is something you did personally; right?

15 A. It is.

16 Q. What was the total amount for asbestos
17 liabilities? And I think this -- did this one include
18 defense costs?

19 A. Well there's -- the second line is defense costs.
20 There, that would be -- the first line would be indemnity
21 payments and the second line would be defense costs.

22 Q. Okay. So the indemnity payments are about \$800
23 million; right?

24 A. Again, I think it's important to understand what
25 this is. But yes, that's what -- that's the number on

Cross - Magee

1 this.

2 Q. Mr. Magee, please tell the Court. I don't want
3 you to --

4 A. Because if you look at the title. If you could
5 get give us the title of this document?

6 Q. Yes, we can. I think it says --

7 A. It's the same estimate we were looking at for ten
8 years, within some assumptions made to go out to 2053.
9 It was not an attempt to be an estimate to 2053. It was
10 simply an attempt to take the ten year estimate and see
11 what would happen -- again, this is just the ten year one
12 here. That was the first spreadsheet, the one that was
13 intended to be produced. Because the one you pulled up
14 there since then is not an estimate.

15 Let me explain exactly what this is. This is a
16 document that never left my computer except for when it
17 was inadvertently disclosed because it was a spreadsheet
18 back further in the spreadsheet that contained that ten
19 year estimate on the front page. This was simply
20 something I did, me -- only me. To take that ten year
21 estimate that you see right there through 2018 and then
22 apply the Bates White incidence model and an inflation
23 rate past that time without any other -- I had no -- as
24 you know from what I've said, I don't think we can
25 reliably estimate what's going to happen in four months

Cross - Magee

1 in asbestos litigation, much less ten years, much less 50
2 years.

3 All I did here was I took the estimate and I said
4 let's assume that nothing changes and let's use a two and
5 a half percent inflation rate and let's use the --
6 actually, in this case the Bates White incidence model,
7 and let's assume that the payments decline by exactly the
8 same amount as the Bates White incidence model for
9 disease over the years with a two percent inflation rate.
10 And let's just run that out to the end and see what those
11 number would total.

12 Q. This also took the trusts into account?

13 A. Absolutely not. Again, it depends on what you
14 mean by this. If you're talking about the ten year
15 period and Dr. Bates' analysis, I believe it would have
16 depended on which scenario you used. Our analysis, as I
17 tried to say before, was a top down analysis looking at
18 the law firms in total what did Mr. Grant and I agree
19 could be the amount that we'd be able to decline our
20 payments by.

21 If you look at percent of prior year's payments.
22 Let's see it's the -- under payments, it's the fourth
23 line down. If you look at that and you look at these
24 numbers -- I'll use this arrow now. No, I can't figure
25 out how to use it. Anyway, if you look at the 99

Cross - Magee

1 percent, 97 percent, 85 percent, 96 percent, 95 percent,
2 94 percent. For the ten year period, Mr. Grant and I
3 agreed on a number we thought our folks could negotiate
4 with claimant's counsel to lower the payment amounts by,
5 given what the incidence model said we were going to be
6 given by declining incidents and given what we thought we
7 should be able to do just through negotiations. And then
8 we took our top down model and compared it to what I call
9 Dr. Bates' bottom up model to make sure that we were
10 within his likely range. And we did that for -- that's
11 how the ten year numbers were derived with those
12 percentages.

13 After that, as I said, everything I did to run it
14 out to 2053 was simply -- and that's what this would say.
15 I believe if you could pull it up I would it would say BW
16 incidence model thereafter, and I believe it would say a
17 two and a half percent inflation rate. That's all I did.
18 That was my calculation just to say what would this look
19 like if you run those numbers all the way out to 2053.
20 And the only assumption is that we get what the incidence
21 model gives us and that there's two and a half percent
22 inflation for that period. That's why I said that was
23 not an estimate. That was an extrapolation. This one
24 through the ten years, that was an estimate.

25 Q. Understood. Mr. Magee, one of the items on there

Cross - Magee

1 is "remaining solvent insurance?"

2 A. Yes.

3 Q. In 2011 the number's 137.7. Is that close to your
4 understanding of the amount of insurance that was
5 available when the debtor filed for bankruptcy?

6 A. Actually, no. If you look back at 2010 they would
7 have been closer. I believe there was \$192 million
8 available at the time. And this assumed that a bunch of
9 that insurance would have been collected. If you look on
10 line 15, you see "insurance recoveries." It would have
11 said that \$67 million would have been recovered in 2010;
12 \$39 million in 2011. So at the time of the filing of the
13 Chapter 11, some of that \$67 million had been collected
14 so that the total remaining was \$192 million.

15 Q. Bear with me a second, Your Honor.

16 THE COURT: I think we need to quit for the day.

17 MR. GUY: I think we are just ready. Can I just
18 confirm?

19 THE COURT: Sure. Okay.

20 MR. GUY: Thank you, Your Honor.

21 THE COURT: All right. Mr. Swett, we'll start
22 with you, I guess, in the morning then.

23 MR. SWETT: Thank you, Your Honor.

24 THE COURT: We'll be back at 9:30 tomorrow.

25 (Off the record at 5:34 p.m.)

Cross - Magee

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CERTIFICATE

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I, Tracy Rae Dunlap, RMR, CRR, an Official Court Reporter for the United States District Court for the Western District of North Carolina, do hereby certify that I transcribed, by machine shorthand, the proceedings had in the case of IN RE: GARLOCK SEALING TECHNOLOGIES, LLC, et al, Bankruptcy Case No. 10-BK-31607, on August 5, 2013.

7

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In witness whereof, I have hereto subscribed my name, this 6th day of August 2013.

9

10

___/S/___Tracy Rae Dunlap___
TRACY RAE DUNLAP, RMR, CRR
OFFICIAL COURT REPORTER

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